

PART 778 -- PERMIT APPLICATIONS -- MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Sec.

- 778.1 Scope and purpose
- 778.8 Information collection
- 778.9 Certifying and updating existing permit application information
- 778.11 Providing applicant, operator, and ownership and control information
- 778.12 Providing permit history information
- 778.13 Providing property interest information
- 778.14 Providing property interest information
- 778.15 Right-of-entry information
- 778.16 Status of unsuitability claims
- 778.17 Permit term
- 778.18 Insurance
- 778.21 Proof of publication
- 778.22 Facilities or structures used in common

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

SOURCE: 48 FR 44399, Sept. 28, 1983, unless otherwise noted.

[For the list of Final Rules affecting these sections, as published in the Federal Register, see ["Regulation History - Changes to the Regulations Parts 700-890, 3/13/79 - 6/30/00"](#).]

30 CFR Sec. 778.1 Scope and purpose.

This part establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This part covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This part applies to any person who submits an application to a regulatory authority for a permit to conduct surface coal mining and reclamation operations.

30 CFR Sec. 778.8 Information collection.

(a) Under the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. Section 507(b) of the Act provides that persons applying for a permit to conduct surface coal mining operations must submit to the regulatory authority certain information regarding the applicant and affiliated entities, their compliance status and history, property ownership and other property rights, violation information, right of entry, liability insurance, the status of unsuitability claims, and proof of publication of a newspaper notice. The regulatory authority uses this information to ensure that all legal, financial and compliance requirements are satisfied before issuance of a permit. Persons seeking to conduct surface coal mining operations must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB clearance number for this part is 1029-0117.

(b) We estimate that the public reporting and record keeping burden for this part averages 27 hours per response, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding

this burden estimate or any other aspect of these information collection and record keeping requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, NW, Washington, DC 20240. Please refer to OMB Control Number 1029-0117 in any correspondence.

[62 FR 19459, Apr. 21, 1997; redesignated and revised at 65 FR 79668, Dec. 19, 2000]

30 CFR Sec. 778.9 Certifying and updating existing permit application information.

In this section, "you" means the applicant and "we" or "us" means the regulatory authority.

(a) If you have previously applied for a permit and the required information is already in AVS, then you may update the information as shown in the following table.

If...	then you...
(1) All or part of the information already in AVS is accurate and complete	may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.
(2) Part of the information in AVS is missing or incorrect	must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.
(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections	must include in your permit application the information required under this part.

(b) You must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete.

(c) We may establish a central file to house your identity information, rather than place duplicate information in each of your permit application files. We will make the information available to the public upon request.

(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information previously submitted under this section and Secs. 778.11 through 778.14 of this part.

[65 FR 79668, Dec. 19, 2000]

30 CFR Sec. 778.11 Providing applicant, operator, and ownership and control information.

(a) You, the applicant, must provide in the permit application --

(1) A statement indicating whether you and your operator are corporations, partnerships, sole proprietorships, or other business entities;

(2) Taxpayer identification numbers for you and your operator.

(b) You must provide the name, address, and telephone number for --

(1) The applicant.

(2) Your resident agent who will accept service of process.

(3) Any operator, if different from the applicant.

(4) Person(s) responsible for submitting the Coal Reclamation Fee Report (Form OSM-1) and for remitting the reclamation fee payment to OSM.

(c) For you and your operator, you must provide the information required by paragraph (e) of this section for every --

(1) Officer.

(2) Director.

(3) Person performing a function similar to a director.

(4) Person who owns 10 to 50 percent of the applicant or the operator.

(5) Person who owns or controls the applicant and person who owns or controls the operator. For each owner or controller who does not own or control an entire surface coal mining operation, you may list the portion or aspect of the operation which that person owns or controls.

(d) The natural person with the greatest level of effective control over the entire proposed surface coal mining operation must submit a certification, under oath, that he or she controls the proposed surface coal mining operation.

(e) You must provide the following information for each person listed in paragraphs (c) and (d) of this section --

(1) The person's name, address, and telephone number.

(2) The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.

(3) The date the person began functioning in that position.

[65 FR 79668, Dec. 19, 2000]

30 CFR Sec. 778.12 Providing permit history information.

(a) You, the applicant, must provide a list of all names under which you, your operator, your partners or principal shareholders, and your operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.

(b) For you and your operator, you must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The

list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.

(c) For any surface coal mining operations that you or your operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation you or your operator own or control on that date, you must provide the --

- (1) Permittee's and operator's name and address;
- (2) Permittee's and operator's taxpayer identification numbers;
- (3) Federal or State permit number and corresponding MSHA number;
- (4) Regulatory authority with jurisdiction over the permit; and
- (5) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

[65 FR 79669, Dec. 19, 2000]

30 CFR Sec. 778.13 Providing property interest information.

You, the applicant, must provide in the permit application all of the following information for the property to be mined --

- (a) The name and address of --
- (1) Each legal or equitable owner(s) of record of the surface and mineral.
 - (2) The holder(s) of record of any leasehold interest.
 - (3) Any purchaser(s) of record under a real estate contract.

(b) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(c) A statement of all interests, options, or pending bids you hold or have made for lands contiguous to the proposed permit area. If you request in writing, we will hold as confidential, under Sec. 773.6(d)(3)(ii) of this chapter, any information you are required to submit under this paragraph which is not on public file under State law.

(d) The Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.

[65 FR 79669, Dec. 19, 2000]

30 CFR Sec. 778.14 Providing violation information.

(a) You, the applicant, must state, in your permit application, whether you, your operator, or any subsidiary, affiliate, or entity which you or your operator own or control or which is under common control with you or your operator, has --

(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

(b) For each suspension, revocation, or forfeiture identified under paragraph (a), you must provide a brief explanation of the facts involved, including the --

(1) Permit number.

(2) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond or similar security forfeited.

(3) Regulatory authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action.

(4) Current status of the permit, bond, or similar security involved.

(5) Date, location, type, and current status of any administrative or judicial proceedings concerning the suspension, revocation, or forfeiture.

(c) A list of all violation notices you or your operator received for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition you must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that you or your operator own or control on that date. For each violation notice reported, you must include the following information, when applicable --

(1) The permit number and associated MSHA number.

(2) The issue date, identification number, and current status of the violation notice.

(3) The name of the person to whom the violation notice was issued,

(4) The name of the regulatory authority or agency that issued the violation notice.

(5) A brief description of the violation alleged in the notice.

(6) The date, location, type, and current status of any administrative or judicial proceedings concerning the violation notice.

(7) If the abatement period for a violation in a notice of violation issued under Sec. 843.12 of this chapter, or its State regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation.

(8) For all violations not covered by paragraph (c)(7) of this section, the actions taken to abate or correct the violation.

[65 FR 79669, Dec. 19, 2000]

30 CFR Sec. 778.15 Right-of-entry information.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit--

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

30 CFR Sec. 778.16 Status of unsuitability claims.

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in Sec. 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application that proposes to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of Sec. 761.14 or Sec. 761.15 of this chapter, respectively.

[48 FR 44399, Sept. 28, 1983, as amended at 64 FR 70837, Dec. 17, 1999]

30 CFR Sec. 778.17 Permit term.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall--

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation

with the need confirmed, in writing, by the applicant's proposed source of financing.

30 CFR Sec. 778.18 Insurance.

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with Sec. 800.60 of this chapter.

30 CFR Sec. 778.21 Proof of publication.

A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by Sec. 773.6(a) (1) of this chapter.

[65 FR 79669, Dec. 19, 2000]

30 CFR Sec. 778.22 Facilities or structures used in common.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.