

**Supporting Statements for Reporting and Recordkeeping
Requirements for 30 CFR Part 780: Surface Mining Permit Applications—
Minimum Requirements for Reclamation and Operation Plan**

**(Final Rulemaking for 30 CFR 780.25, 780.28, and 780.35 and
Correction for 30 CFR 780.15)**

Current OMB Control Number for Part 780: 1029-0036

Terms of Clearance: None.

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*
2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]*
3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].*
4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*
6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*
7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
 - * requiring respondents to report information to the agency more often than quarterly;*
 - * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - * requiring respondents to submit more than an original and two copies of any document;*
 - * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*
 - * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
 - * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
 - * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*
8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years — even if the collection of information activity is the same as in prior periods. There may be

circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*
10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*
11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*
12. *Provide estimates of the hour burden of the collection of information. The statement should:*
 - * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
 - * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
 - * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*
13. *Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).*
 - * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.*

** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*

** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*
15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.*
16. *For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*
17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*
18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.*

Introduction

We, the Office of Surface Mining Reclamation and Enforcement (OSM), are submitting this information collection clearance package to request authority to collect information and require retention of records under sections 780.15, 780.25, 780.28, and 780.35 of 30 CFR Part 780: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. Part 780 specifies what an applicant for a permit for a surface coal mine must include in the reclamation plan component of the permit application. OMB previously renewed and approved the collections of information and recordkeeping requirements for this part under clearance number 1029-0036.

We are requesting a new information collection control number for the sections included in this supporting statement because a final rule, the Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams rule (the “Excess Spoil final rule”), that we are publishing will result in program changes to the currently approved burden for three sections within Part 780 and we are making a programmatic correction to one other section within that part. We also have a renewal request pending for Part 780. After both the renewal request for Part 780 and this request for a new number for certain sections within Part 780 are approved, we will file a correction notice consolidating the two into one information collection control number for Part 780.

The new Excess Spoil final rule removes the requirement previously located in 30 CFR 816.57(a) that the regulatory authority make certain findings before approving waivers from the prohibition on disturbances within 100 feet of an intermittent or perennial stream. Instead, the final rule establishes new permit application and regulatory authority finding requirements in 30 CFR 780.28 that would apply to all proposed surface disturbances in or within 100 feet of a perennial or intermittent stream.

In addition, the new final rule revises 30 CFR 780.35 to require that the permit applicant—

- Demonstrate that the operation has been designed to minimize the volume of excess spoil to the extent possible, taking into consideration applicable regulations concerning approximate original contour restoration, safety, stability, and environmental protection and the needs of the proposed postmining land use.
- Demonstrate that the designed maximum cumulative volume of all proposed excess spoil fills within the permit area is no larger than the capacity needed to accommodate the anticipated cumulative volume of excess spoil that would be generated by the proposed operation.
- Avoid placement of excess spoil in or within 100 feet of a perennial or intermittent stream to the extent possible. If the application proposes to place excess spoil in or within 100 feet of a perennial or intermittent stream, the application must demonstrate why avoidance is not reasonably possible. In addition, in the latter case, the applicant must develop a reasonable range of reasonably possible alternative excess spoil disposal plans in which the size, numbers, and locations of the fills vary; submit an analysis of the

environmental impacts of those alternatives; and select the alternative with the least overall adverse impact on fish, wildlife, or related environmental values.

Finally, the Excess Spoil final rule revises 30 CFR 780.25 to require that permit applicants avoid placement of coal mine waste in or within 100 feet of a perennial or intermittent stream to the extent possible. If the application proposes to place coal mine waste in or within 100 feet of a perennial or intermittent stream, the application must demonstrate why avoidance is not reasonably possible. In addition, in the latter case, permit applicants must identify a reasonable range of alternative coal mine waste disposal methods and alternative locations for any disposal structures; analyze the environmental impacts of each alternative; and select the alternative with the least overall adverse impact on fish, wildlife, and related environmental values.

Several commenters on the proposed rule that we published on August 24, 2007 (72 FR 48890), expressed concern that the proposed alteration in scope from perennial and intermittent streams to waters of the United States would increase the burden, contrary to our statement in the preamble to the proposed rule that we did not anticipate any such change. However, we decided not to adopt the proposed change as part of the final rule, so the comment is now moot. The scope of the stream buffer zone rule remains perennial and intermittent streams, not waters of the United States.

In addition, we are requesting a correction for 30 CFR 780.15 to reflect a previous program change.

Each section of 30 CFR Part 780 included in this request is discussed separately. Because the responses to some items in the instructions for the supporting statement are identical for each section; those responses appear on pages 8-10 of this document. Except as otherwise noted in the supporting statements for individual sections, the universe of respondents and potential respondents consists of 2,933 surface mine entities and 24 state regulatory authorities.

The tables below summarize the hours for which clearance is requested, the total burden hours for each section currently approved by OMB, and the changes we are now requesting that would result from both adjustments and the program changes in the final rule.

**SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 780.15,
780.25, 780.28, AND 780.35**

SECTION	NO. OF APPLICATIONS	NO. OF STATE REVIEWS	HOURS PER APPLICATION	HOURS PER STATE REVIEW	TOTAL HOURS REQUESTED	HOURS CURRENTLY APPROVED	DIFFERENCE
780.15	0	0	0	0	0	8	(8)
780.25	225	221	123	25.2	33,250	14,155	19,095
780.28	270	264	10	10	5,340	0	5,340
780.35	170	168	27	25	8,790	12,660	(3,870)
TOTALS			160	60.2	47,380	26,823	20,557

SUMMARY OF CHANGES TO ICB FOR 30 CFR 780.15, 780.25, 780.28, AND 780.35

REASON FOR CHANGE	CHANGE IN HOURS
Reestimate/Change in use	13,829
Program change	6,728
Net change to ICB	20,557

**NON-LABOR COST TO RESPONDENTS FOR 30 CFR 780.15, 780.25,
780.28, AND 780.35**

SECTION	NUMBER OF RESPONDENTS	COST PER RESPONDENT	TOTAL COSTS	CURRENTLY APPROVED TOTAL COST	DIFFERENCE
780.15	0	0	0	20	(20)
780.25	225	\$400	90,000	102,000	(12,000)
780.28	270	\$100	27,000	0	27,000
780.35	170	\$500	85,000	66,300	18,700
TOTALS	665	\$1000	202,000	168,320	33,680

List of Items with Identical Responses

3. At the discretion of the regulatory authority, persons may submit responses electronically to the extent that both parties have the requisite technical capability. Further, permit applicants have been increasingly using electronic means to prepare their permit applications using word processing, AutoCAD and GPS software applications. Several states, such as Kentucky and Virginia, receive 90% of their permit applications electronically. Other states are not yet prepared to receive applications electronically because of other priorities or the limited size of their program. We estimate that on a national basis, 33% of all permit applications are submitted by electronic means. We hope that this figure will improve over time as more states and permit applicants realize the time and cost savings associated with electronic submissions.
4. The information requested under 30 CFR Part 780 is collected infrequently (generally only once, at the time that a person applies for a permit). Therefore, duplication is minimal to nonexistent. When submitting an application for a permit revision, permittees may cross-reference relevant materials previously submitted in a permit application. OSM is the only federal agency charged with implementing sections 507 and 508 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).
5. There are no special provisions for small organizations. While small operators may be eligible for financial assistance under the Small Operators Assistance Program (SOAP), Congress has not appropriated money for that program in recent years.
6. Information required in Part 780 provides the basis for SMCRA permitting decisions. Information required under Part 780 is provided only at the time of application. Therefore, a reduction in the frequency of collection is not possible because the information is not collected on a periodic basis.
7. No collection of information under 30 CFR Part 780 is inconsistent with the guidelines at 5 CFR 1320.5(d)(2) as summarized in the instructions for this item of the supporting statement. Generally, state regulatory authorities request submission of one original application and two copies. In States that promote electronic submissions, applicants submit 1-3 compact discs. When OSM is the regulatory authority, 3 paper or electronic copies are normally requested, one for review by OSM, one for the federal land management agency, and one to be maintained locally for public review.
8. To determine the burden that would be placed on respondents by the revisions to 30 CFR 780.25, 780.28, and 780.35, OSM relied on information supplied by our Knoxville Field Office, which processes permit applications for lands for which OSM is the regulatory authority in the Appalachian Region, and contacted the following state regulatory authorities and a mining consulting firm that prepares mining permit applications. We supplied a concise description of the proposed revisions along with a request for input on the associated information collection requirements and any other comments they wished to make regarding the clarity of the rules and potential burdens.

Jim Pierce, Lead Permitting Engineer
West Virginia Department of Environmental Protection
Division of Mining and Reclamation
1101 George Kostas Drive
Logan, WV 25601
Phone: 304-792-7250
Email: jpierce@wvdep.org

Mark Carew
Kentucky Department of Natural Resources
Division of Mine Permitting
#2 Hudson Hollow Complex
Frankfort, KY 40601
Phone: (502) 564-2320
Email: Mark.Carew@ky.gov.

Jim Canterbury
Summit Engineering Inc.
400 Allen Drive, Suite 100
Charleston, WV 25302
Phone: 304-342-1342
Email: jcanterbury@summit-engr.com

The persons listed above stated that many of the new requirements would not add appreciably to permittee or state regulatory authority workloads because similar requirements or reviews already exist under the programs implementing sections 401 and 404 of the Clean Water Act. They also noted that some of the new requirements were already being implemented as a matter of policy in Kentucky and West Virginia.

Mr. Carew stated that, with respect to proposed excess spoil fills and coal mine waste disposal facilities, it was not clear whether economic factors may be considered in determining whether an alternative is possible. We have revised the rule and preamble to clarify that the determination must be made on the basis of cost, technology, and logistics, meaning that economic factors are an integral element of the determination.

Mr. Carew expressed concern that one of the findings required for a variance from the prohibition on disturbance of the buffer may be difficult or impossible to meet because any disturbance will have some impact compared to no impact. The rule in question would have required the regulatory authority to find that measures proposed by the applicant in lieu of maintaining the 100-foot buffer would be no less effective than that buffer in meeting the requirements of the regulatory program. Based on comments that we received on the proposed rule, we did not include this finding in the final rule.

Mr. Carew noted that the revised finding for stream diversions may mean that engineers will have to certify compliance with vague requirements (protection of fish, wildlife, and

related environmental values) outside their area of expertise. We have revised the rule to limit the scope of the certification to the design and construction requirements in the regulations and any design criteria established by the regulatory authority. The certification need not duplicate the finding required of the regulatory authority.

On August 24, 2007, OSM published in the Federal Register (72 FR48890), a notice requesting comments from the public regarding the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden on respondents. This notice gave the public 60 days in which to comment. However, no comments were received regarding this request.

9. Not applicable. OSM and state regulatory authorities provide no payments or gifts to respondents except for grants to states authorized by law.
10. The permit applicant has the right to request confidentiality for certain information, for example, analyses of the chemical and physical properties of the coal to be mined. Sections 507(b)(17), 508(a)(12), and 508(b) of SMCRA require that certain types of permit application information be kept confidential if requested by the permit applicant and approved by the regulatory authority. The Archeological Resources Protection Act of 1979, 16 U.S.C. 470, requires that information on the nature and location of archeological resources on public lands and Indian lands be kept confidential. Confidentiality requests are handled in accordance with the procedures provided in 30 CFR 773.13(d).
11. Not applicable. Sensitive questions are not asked.
15. See individual responses for each rule section for explanation for the burden hour adjustments.
16. Not applicable. OSM has no plans to publish the information collected.
17. Not applicable. OSM is not seeking a waiver from the requirement to display the expiration date of the OMB approval of the information collected.
18. Not applicable. There are no exceptions to the certification statement in Item 19 of OMB Form 83-I.

***Supporting Statement for Reporting Requirements of
Section 780.15***

A. Justification

1. Section 508(a)(9) of SMCRA requires that each application for a surface mining permit include the steps to be taken to comply with applicable air and water quality laws and regulations. However, the regulations at 30 CFR 780.15 primarily reflect sections 515(a) and (b)(4) of SMCRA, which provide that each permit must require that surface coal mining and reclamation operations be conducted so as to “stabilize and protect all surface areas *** to effectively control erosion and air pollution attendant to erosion.” Paragraph (a) of 30 CFR 780.15 provides that, if the proposed operations would produce more than one million tons of coal per year and would be located west of the 100th meridian west longitude, the application must include (1) an air quality monitoring program to evaluate the effectiveness of fugitive dust control practices under 30 CFR 816.95, and (2) a plan for fugitive dust control practices under 30 CFR 816.95. Paragraph (b) of 30 CFR 780.15 requires that all other applications, regardless of size or location, include “a plan for fugitive dust control practices as required under 30 CFR 816.95.” However, on January 10, 1983, in response to a court decision restricting OSM’s jurisdiction to air pollution attendant to erosion, OSM revised 30 CFR 816.95 to remove both the requirement for a plan for fugitive dust control practices and the list of fugitive dust control practices. The preamble effectively acknowledges that the revised performance standards render the permit application regulations moot.
2. The regulatory authority no longer has any meaningful use for the information submitted under this rule. To the extent that it includes information required for compliance with the Clean Air Act, the rule satisfies the requirement of section 508(a)(9) of SMCRA.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.

12. Reporting and Reviewing Burden

a. Burden Hour Estimates for Respondents

On January 10, 1983, in response to a court decision restricting OSM's jurisdiction to air pollution attendant to erosion, we revised 30 CFR 816.95 to remove both the requirement for a plan for fugitive dust control practices and the list of fugitive dust control practices. The preamble effectively acknowledges that the revised performance standards render the permit application regulations at 30 CFR 780.15 moot. Therefore, we are not requesting or including an information collection burden for 30 CFR 780.15.

b. Estimated Annual Wage Cost to Respondents

None. See item 12.a.

13. Total Annual Non-Wage Cost Burden to Respondents.

a. Capital and Start-Up Costs.

None. See item 12.a.

b. Operation, Maintenance and Services.

None. See item 12.a.

14. Estimate of Costs to the Federal Government:

None. See item 12.a.

15. There are currently 8 hours approved for this section. The new Excess Spoil final rule will not affect this burden because it does not revise this section. However, we are requesting that this burden be eliminated for the reasons discussed in items 1 and 12.a. If approved, the burden will change as follows:

$$\begin{array}{r} 8 \text{ hours currently approved} \\ - \underline{\quad} 8 \text{ hours because of a program change} \\ 0 \text{ hours requested} \end{array}$$

16. See list of items with identical responses.

17. See list of items with identical responses.

18. See list of items with identical responses.

***Supporting Statement for Reporting Requirements of
Section 780.25***

A. Justification.

1. Sections 507(b)(14), 508(a)(5) and (13), 515(a), 515(b)(10) and (11), and 515(f) of SMCRA provide authority for 30 CFR 780.25, which contains design and other permit application requirements for siltation structures, impoundments, and refuse piles.

On August 24, 2007, we proposed to revise the rules to include new requirements relating to refuse piles and coal mine waste impoundments, which we are now adopting in final form. The purpose of the new rules is to ensure that the applicant selects the alternative with the least overall adverse impact on fish, wildlife, and related environmental values. The authority for the rule revisions arises primarily from paragraphs (b)(10)(B)(i) and (b)(24) of section 515 of SMCRA, which require that surface coal mining operations use the best technology currently available to the extent possible to prevent additional contributions of suspended solids to streamflow outside the permit area and to minimize disturbances to and adverse impacts on fish, wildlife, and related environmental values.

2. Both permit applicants and SMCRA regulatory authorities use the information required by this rule to ensure that siltation structures, impoundments, and refuse piles are designed to protect public safety, property, and the environment.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.

12. Reporting and Reviewing Burden.

a. Burden Hour Estimates for Respondents.

Burden on Permit Applicants

According to our FY 2007 annual oversight evaluation reports, we and the states issued 225 new permits for surface mines during that year (221 by the states and 4 by us), all of which must include at least some of the information required by this section. Based on consultations with the industry representatives listed in item 8, each permit applicant will need an average of 123 hours to prepare the information required by 30 CFR 780.25 for siltation structures, impoundments, and refuse piles for each permit application.

This burden does not include collecting the new information that the Excess Spoil final rule requires for applications proposing to dispose of coal mine waste in refuse piles or impoundments located in or within 100 feet of a perennial or intermittent stream. However, the persons listed in item 8 indicated that permit applicants are already preparing and submitting similar information under regulations and guidance implementing sections 401 and 404 of the Clean Water Act. Therefore, we are not including any burden hours for the new requirements for permit applicants for those facilities.

We estimate that the total annual burden to permit applicants for compliance with this section will be **27,675 hours** (225 applications per year x 123 hours per application).

Burden on State Regulatory Authorities

Based on consultations with the state regulatory authorities listed in item 8, the regulatory authority will need an average of 25 hours to review the information required by 30 CFR 780.25 for siltation structures, impoundments, and refuse piles for each permit application. However, that figure does not include the burden of reviewing the new information that the Excess Spoil final rule requires for applications proposing to dispose of coal mine waste in refuse piles or impoundments located in or within 100 feet of a perennial or intermittent stream. Averaged together, the state regulatory authority respondents listed in item 8 of this supporting statement indicate that review of those requirements (identification of a reasonable range of alternatives for coal mine waste disposal and analysis of the environmental impact of those alternatives) will add 4.5 hours to the review burden of the regulatory authority for each application for a refuse pile or coal processing waste impoundment. We estimate that the new requirements will apply to approximately 5% (11) of the 221 permit applications that state regulatory authorities receive each year.

Therefore, we estimate that the total annual burden for state regulatory authorities to review information submitted under 30 CFR 780.25 will be **5,575 hours** [(221 permit applications received by state regulatory authorities per year x 25 hours per application)]

+ (11 applications with refuse piles or coal processing waste impoundments x 4.5 hours per application)].

Burden on All Respondents

We estimate that the total annual burden for all respondents will be **33,250 hours** (27,675 hours for permit applicants + 5,575 hours for state regulatory authority review).

b. Estimated Annual Wage Cost to Respondents.

Using data for mining companies from the U.S. Department of Labor, Bureau of Labor Statistics (see http://www.bls.gov/oes/current/naics4_212100.htm), we estimate that permit applicants will incur the wage costs shown in the following table to complete the collection for this section. The wage costs shown include benefits calculated at 40% of hourly wages.

Position	Hour Burden per Response	Cost per Hour (\$)	Total Wage Burden (\$)
Clerical	16	18.40	294
Engineering Technician	44	30.21	1,329
Mining Engineer	60	46.82	2,809
Operations Manager	3	63.72	191
Totals	123		4,623

Therefore, the estimated wage cost to an industry respondent for preparing a permit application under this section is \$4,623. The total annual wage cost to all industry respondents is **\$1,040,175** (\$4,623 per application x 225 permit applications per year).

As explained in item 12.a. above, the average review burden for state regulatory authorities for this section for each permit application received is 25 hours (5,525 total hours divided by 221 permit applications received per year by state regulatory authorities). In addition, we estimate that 11 of those applications will involve refuse piles or coal processing waste impoundments subject to the new final rule. Those applications will require a total of 50 extra hours to review (11 applications x 4.5 hours to review each application). Therefore, the total annual burden is 5,575 hours.

Data from the U.S. Department of Labor, Bureau of Labor Statistics (see http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000) indicate that state employee engineering technicians earn an average \$20.52 per hour, or approximately \$31 per hour when benefits are included. We calculated benefits at 50% of hourly wages, based upon the ratio between wages and benefits for state and local government workers

in the U.S. Bureau of Labor Statistics publication “Employer Costs for Employee Compensation—September 2007.” (See http://www.bls.gov/news.release/archives/ecec_12112007.pdf.) Therefore, the estimated total annual wage cost for state regulatory authorities to review information submitted under this section is **\$172,825** (\$31 per hour x 5,575 hours per year), or \$782 per permit application.

The estimated total annual wage cost burden to all respondents for this section is **\$1,213,000** (\$1,040,175 for industry + \$172,825 for state regulatory authorities), or approximately \$5,391 per application.

13. Total Annual Non-Wage Cost Burden to Respondents:

a. Capital and Start-Up Costs:

We estimate that non-labor costs for each application will average \$400 per application for items such as equipment, copying costs, and travel to the minesite and other locations, which translates to a total cost of **\$90,000** for all applicants (225 applications x \$400 per application).

b. Operation, Maintenance, and Services:

None other than those associated with customary and usual business practices.

14. Estimate of Costs to the Federal Government

Oversight: In keeping with the current guidance concerning oversight of state program implementation, which de-emphasizes process reviews, we do not anticipate conducting any significant oversight review of state compliance with the requirements of 30 CFR 780.25 in the absence of any indication of programmatic or implementation problems. If we conduct an oversight review of this topic in one state per year, we estimate that the review will require an average of 300 hours at \$47 per hour (salary based upon use of a GS 12/5 regulatory program specialist/engineer to review the applications), including benefits; which we estimate will equal 50% of salary. See http://www.opm.gov/oca/08tables/html/g_s_h.asp). The annual cost to the Federal government for this oversight activity is estimated to be **\$14,100** (300 hours per review x 1 review per year x \$47 per hour).

Federal Programs: Based upon data collected in 2007, we estimate that we will annually receive approximately 4 applications for new permits on lands where we are the regulatory authority. As discussed in item 12.a., we estimate that we will need an average of 25 hours to review the information in each permit application that is required under 30 CFR 780.25. At an average salary of \$47 per hour (see explanation in preceding paragraph), the annual wage cost to the Federal government to review all applications will be **\$4,700** (4 applications per year x 25 hours per application x \$47 per hour).

Total Federal Cost

\$ 14,100 Oversight
+ \$ 4,700 Federal programs

\$ 18,800 Total Federal cost

15. There are currently 14,155 hours approved for this section. Because of a program change (adoption of the Excess Spoil final rule), we anticipate that the burden will increase by 50 hours, as shown below. In addition, based on consultation with the persons listed in item 8 above, the unit burden for compliance with requirements of section 780.25 has risen substantially (from 31 hours per application to 123 hours per application for permit applicants), while data collected in 2007 indicate that the number of respondents (permit applications) has dropped slightly (from 255 to 225). We estimate that a total of 33,250 hours will be required to prepare and review the information required by 30 CFR 780.25, which represents an increase of 19,095 hours, as shown below:

14,155 hours currently approved
+ 19,045 hours because of a reestimate and change in use
+ 50 hours because of a program change

33,250 hours requested

16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.

***Supporting Statement for Reporting Requirements of
Section 780.28***

A. Justification.

1. Section 780.28 establishes permit application requirements for surface activities in or within 100 feet of a perennial or intermittent stream. It also specifies findings that the regulatory authority must make before approving those activities. We added this section as part of the new Excess Spoil final rule. The new requirements are primarily intended to implement section 515(b)(10)(B)(i) of SMCRA, which requires that surface coal mining operations be conducted to prevent additional contributions of suspended solids to streamflow outside the permit area to the extent possible, and section 515(b)(24) of SMCRA, which requires that surface coal mining and reclamation operations minimize disturbances to and adverse impacts on fish, wildlife, and related environmental values to the extent possible. Both sections require use of the best technology currently available. Section 201(c) of SMCRA provides the authority for us to adopt regulations implementing those sections of SMCRA.
2. The regulatory authority will use the information provided under this section and the findings that it must make to ensure that surface coal mining and reclamation operations are designed to implement the statutory requirements outlined in the response to item 1.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.
12. Reporting and Reviewing Burden

a. Burden Hour Estimates for Respondents

The final rule removes the requirement in existing 30 CFR 816.57(a) that the regulatory authority make certain findings before approving waivers from the prohibition on surface

mining activities that would disturb land within 100 feet of an intermittent or perennial stream. New section 780.28 establishes permit application requirements that apply to all proposed disturbances in or within 100 feet of a perennial or intermittent stream. In general, the applicant must demonstrate that: (1) it is not reasonably possible to avoid disturbing the stream or its buffer zone; and (2) the activities would meet the statutory requirements for sediment control and protection of fish, wildlife, and related environmental values to the extent possible using the best technology currently available. Section 780.28 also requires that the regulatory authority make findings that the applicant has made the required demonstration in a satisfactory manner.

Therefore, the burden previously imposed on permit applicants and regulatory authorities under 30 CFR 816.57 for stream buffer zones moves to new section 780.28. Based on responses from the persons listed in item 8, we estimate that the new requirements in section 780.28 will impose a unit burden equal to that formerly imposed under 30 CFR 816.57.

Burden on Permit Applicants

According to data collected for our FY 2007 annual oversight evaluation reports, we and the states issued 225 new permits for surface mines during that year (221 by the states and 4 by us). Based on the information provided by the persons listed in item 8, we estimate that 60% (135) of those permits will include activities in or within 100 feet of a perennial or intermittent stream and therefore must include the information required by this section. On the same basis, we estimate that the information also will be needed for an equal number (135) of permit revisions and amendments, and that each applicant will need 10 hours to prepare the information required by section 780.28. Therefore, the total annual burden to permit applicants for compliance with this section would be **2,700 hours** (270 applications for new permits or permit revisions with activities in buffer zones x 10 hours per application).

Burden on State Regulatory Authorities

State regulatory authorities receive 98% of the applications for new permits and permit revisions. As discussed above, we estimate that 60% of those applications (132 new permits and 132 permit revisions) will require submittal of the information required by 30 CFR 780.28. Based on the information provided by the persons listed in item 8, we estimate that each application will require an average of 10 hours to review. Therefore, we estimate that the total annual burden for state regulatory authorities to review applications under 30 CFR 780.28 and make the required findings will be **2,640 hours** (264 permit and permit revision applications received by state regulatory authorities with activities in buffer zones per year x 10 hours per application).

Burden on All Respondents

The total annual burden for all respondents would be **5,340 hours** (2,700 hours for permit applicants + 2,640 hours for state regulatory authority review).

b. Estimated Annual Wage Cost to Respondents

Using data for mining companies from the U.S. Department of Labor, Bureau of Labor Statistics (see http://www.bls.gov/oes/current/naics4_212100.htm), we estimate that permit applicants will incur the wage costs shown in the following table to complete the collection for this section. The wage costs shown include benefits calculated at 40% of hourly wages.

Position	Hour Burden per Response	Cost per Hour (\$)	Total Wage Burden (\$)
Clerical	1	18.40	18
Engineering Technician	5	30.21	151
Mining Engineer	3	46.82	140
Operations Manager	1	63.72	64
Totals	10		373

Therefore, the estimated wage cost to an industry respondent for preparing a permit application under this section is \$373. The total annual wage cost to all industry respondents is **\$100,710** (\$373 per application x 270 new permit and permit revision applications per year that involve this section).

As explained in item 12.a. above, the average review burden for state regulatory authorities for this section for each permit application received with this information is 10 hours and the total annual burden is 2,640 hours (264 permit and permit revision applications received by state regulatory authorities with activities in buffer zones per year x 10 hours per application).

Data from the U.S. Department of Labor, Bureau of Labor Statistics (see http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000) indicate that state employee engineering technicians earn an average \$20.52 per hour, or approximately \$31 per hour when benefits are included. We calculated benefits at 50% of hourly wages, based upon the ratio between wages and benefits for state and local government workers in the U.S. Bureau of Labor Statistics publication “Employer Costs for Employee Compensation—September 2007.” (See http://www.bls.gov/news.release/archives/ecec_12112007.pdf.) Therefore, the estimated total annual wage cost for state regulatory authorities to review information submitted under this section is **\$81,840** (\$31 per hour x 2,640 hours per year), or \$310 per permit application.

The estimated total annual wage cost burden to all respondents for this section is **\$182,550** (\$100,710 for industry + \$81,840 for state regulatory authorities).

13. Total Annual Non-Wage Cost Burden to Respondents.

a. Capital and Start-Up Costs:

We estimate that non-labor costs for each application will average \$100, which translates to a total cost of **\$27,000** for all applicants (270 new permit and permit revision applications per year that involve this section x \$100 per application).

b. Operation, Maintenance, and Services:

None other than those associated with customary and usual business practices.

14. Estimate of Costs to the Federal Government:

Oversight: In keeping with the current guidance concerning oversight of state program implementation, which de-emphasizes process reviews, we do not anticipate conducting any significant oversight review of state compliance with the requirements of 30 CFR 780.28 in the absence of any indication of programmatic or implementation problems. If we conduct an oversight review of this topic in one state per year, we estimate that the review will require an average of 100 hours at \$47 per hour (salary based upon use of a GS 12/5 regulatory program specialist/engineer to review the applications), including benefits; which we estimate will equal 50% of salary. See http://www.opm.gov/oca/08tables/html/g_s_h.asp). The annual cost to the Federal government for this oversight activity is estimated to be **\$4,700** (100 hours per review x 1 review per year x \$47 per hour).

Federal Programs: Based upon data collected in 2007, we estimate that we will receive approximately 6 new permit and permit revision applications with activities in buffer zones per year x 10 hours to review that information in each permit application. At an average salary of \$47 per hour (see explanation in preceding paragraph), the annual wage cost to the Federal government to review those applications will be **\$2,820** (6 applications per year x 10 hours per application x \$47 per hour).

Total Federal Cost

	\$ 4,700	Oversight
+	\$ 2,820	Federal programs
	\$ 7,520	Total Federal cost

15. There are currently no hours approved for this section, which we are adding as part of the new Excess Spoil final rule. As discussed above, we are requesting approval of 5,340 burden hours for this new section, as shown below:

0 hours currently approved
+ 5,340 hours because of a program change
5,340 hours requested

16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.

***Supporting Statement for Reporting Requirements of
Section 780.35***

A. Justification.

1. The regulations at 30 CFR 780.35, which establish permit application requirements for the disposal of excess spoil from surface mines, reflect the requirement in section 508(a) (5) of SMCRA that the permit application include a statement of the engineering techniques to be used in mining and reclamation, as well as a description of how the operation will comply with each requirement of section 515. Paragraph (b)(22) of section 515 addresses the disposal of excess spoil.

The new Excess Spoil final rule revises 30 CFR 780.35 by adding provisions requiring that the mining operation be designed to minimize the creation of excess spoil and that the designed cumulative volume of all excess spoil fills be no greater than the volume needed to contain the amount of excess spoil to be generated. The new provisions also require avoidance of perennial and intermittent streams and their buffer zones to the extent possible. If avoidance is not possible, the applicant must demonstrate why avoidance is not reasonably possible. In addition, in those cases, the applicant must identify and evaluate a reasonable range of reasonably possible alternatives with respect to excess spoil disposal and select the alternative with the least overall adverse impact on fish, wildlife, and related environmental values. The authority for these provisions is derived from paragraphs (b)(10)(B)(i) and (b)(24) of section 515 of SMCRA, which require that, to the extent possible, surface coal mining operations use the best technology currently available to prevent additional contributions of suspended solids to streamflow outside the permit area and to minimize disturbances to and adverse impacts on fish, wildlife, and related environmental values.

2. The regulatory authority uses the geotechnical investigation and fill design requirements of this section to ensure that excess spoil is disposed of safely in a stable manner with a minimum of adverse environmental impacts.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.

10. See list of items with identical responses.
11. See list of items with identical responses.
12. Reporting and Reviewing Burden
 - a. Burden Hour Estimates for Respondents

Burden on Permit Applicants

As part of the Excess Spoil final rule, we are revising 30 CFR 780.35 (a)(1) and (2) to require that all proposed mining operations be designed to minimize the creation of excess spoil and that the cumulative volume of all excess spoil fills be no greater than the volume needed to contain the amount of excess spoil to be generated. Based on responses from the persons in item 8, we estimate that these requirements will add one hour to the burden for permit applicants and one hour to the burden for regulatory authorities to review permit applications.

Paragraph (a)(3) of the revised rule also requires that operations be designed to avoid placement of excess spoil in perennial and intermittent streams and their buffer zones to the extent possible. When avoidance is not possible, the applicant must demonstrate that there is no reasonably possible alternative. In that case, each applicant proposing to dispose of excess spoil must identify a reasonable range of reasonably possible alternatives with respect to the size, configuration, number, and location of fills, evaluate their environmental impacts, and select the alternative with the least overall adverse impact on fish, wildlife, and related environmental values. The persons listed in item 8 indicate that these new requirements will not add to the burden for the permit applicant because substantially similar information is already being collected and provided under a different law—sections 401 and 404 of the Clean Water Act. However, on average, the state regulatory authority respondents listed in item 8 estimate that review of the new material submitted in the permit application will add 6 hours to the burden of the regulatory authority for each application that includes disposal of excess spoil.

According to studies that we and the states completed in connection with earlier rulemaking efforts, more than 98% of all excess spoil fills are located in Kentucky, Virginia, and West Virginia. Using data provided by the persons listed in item 8, Kentucky reports that in 2006 it issued 77 permitting actions (new permits, revisions, and amendments) involving excess spoil fills on surface mines, while West Virginia reports issuing an average of 45 such actions annually in recent years. According to our FY 2006 annual oversight evaluation reports, Virginia and West Virginia issued nearly equal numbers of permits for surface mines in FY 2006, so we will use the same numbers for Virginia as West Virginia; i.e., we estimate that Virginia also issues an average of 45 permitting actions each year involving excess spoil fills on surface mines. We also estimate that a total of 3 permitting actions in other states (including 2 by OSM in Tennessee) will involve excess spoil fills on surface mines. Using these numbers, we estimate that we and the states will issue an average of 170 permitting actions (new

permits, amendments, and major revisions) per year approving excess spoil fills on surface mines (77 in Kentucky + 45 in West Virginia + 45 in Virginia + 3 in other states).

Consultations with the industry representatives listed in item 8 indicate that each applicant will need 26 hours to prepare the information required by 30 CFR 780.35, exclusive of the new information required by the Excess Spoil final rule. (As a point of reference to explain the difference in unit burden hours from the corresponding underground mine permitting rules at 30 CFR 784.19, Kentucky data show that each permitting action includes an average of three excess spoil fills, with the vast majority of excess spoil fills located on surface mines.) As discussed above, the new requirements at (a)(1) and (2) would add one hour to that burden, exclusive of the information that applicants are already preparing and submitting under a different law (the Clean Water Act). Consequently, a permit applicant would need a total of 27 hours to collect the information required under section 780.35, as revised by the new final rule. Therefore, we estimate that the total annual burden to permit applicants for compliance with this section will be **4,590 hours** (170 applications with excess spoil fills x 27 hours per application).

Burden on State Regulatory Authorities

Consultations with the state regulatory authority representatives listed in item 8 of the pending renewal request for Part 780 indicate that, for each application, the regulatory authority will need 18 hours to review the information required by 30 CFR 780.35, exclusive of the new information required by the Excess Spoil final rule. As discussed above, the burden for state regulatory authorities to review the information submitted under this section will increase by 7 hours per application as a result of the new Excess Spoil final rule, for a total average review burden of 25 hours per application. We estimate that the total annual burden for state regulatory authorities to review permit applications under 30 CFR 780.35 will be **4,200 hours** (168 permit and permit revision applications received per year by state regulatory authorities with proposed excess spoil fills x 25 hours per application).

Burden on All Respondents

We estimate that the total annual burden for all respondents under this section will be **8,790 hours** (4,590 hours for permit applicants + 4,200 hours for state regulatory authority review).

b. Estimated Annual Wage Cost to Respondents

Using data for mining companies from the U.S. Department of Labor, Bureau of Labor Statistics (see http://www.bls.gov/oes/current/naics4_212100.htm), we estimate that permit applicants will incur the wage costs shown in the following table to complete the collection for this section. The wage costs shown include benefits calculated at 40% of hourly wages.

Industry Wage Cost

Position	Hour Burden per Response	Cost per Hour (\$)	Total Wage Burden (\$)
Clerical	1	18.40	18
Engineering Technician	18	30.21	544
Mining Engineer	7	46.82	328
Operations Manager	1	63.72	64
Totals	27		954

Therefore, the estimated wage cost to an industry respondent for preparing a permit application under this section is \$954. The total annual wage cost to all industry respondents is **\$162,180** (\$954 per application x 170 new permit and permit revision applications per year that involve this section).

As explained in item 12.a. above, the average review burden for state regulatory authorities for this section for each permit application received with this information is 25 hours and the total annual burden is 4,200 hours (168 permit and permit revision applications with excess spoil received per year by state regulatory authorities x 25 hours per application).

Data from the U.S. Department of Labor, Bureau of Labor Statistics (see http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000) indicate that state employee engineering technicians earn an average \$20.52 per hour, or approximately \$31 per hour when benefits are included. We calculated benefits at 50% of hourly wages, based upon the ratio between wages and benefits for state and local government workers in the U.S. Bureau of Labor Statistics publication “Employer Costs for Employee Compensation—September 2007.” (See http://www.bls.gov/news.release/archives/ecec_12112007.pdf.) Therefore, the estimated total annual wage cost for state regulatory authorities to review information submitted under this section is **\$130,200** (\$31 per hour x 4,200 hours per year), or \$775 per permit application.

The estimated total annual wage cost burden to all respondents for this section is **\$292,380** (\$162,180 for industry + \$130,200 for state regulatory authorities).

13. Total Annual Non-Wage Cost Burden to Respondents.

a. Capital and Start-Up Costs:

We estimate that non-labor costs for each application average \$500, which translates to a total cost of **\$85,000** for all applicants (170 applications x \$500 per application).

b. Operation, Maintenance, and Services:

None other than those associated with customary and usual business practices.

14. Estimate of Costs to the Federal Government:

Oversight: In keeping with the current guidance concerning oversight of state program implementation, which de-emphasizes process reviews, we do not anticipate conducting any significant oversight review of state compliance with the requirements of 30 CFR 780.35 in the absence of any indication of programmatic or implementation problems. If we conduct an oversight review of this topic in one state per year, we estimate that the review will require an average of 100 hours at \$47 per hour (salary based upon use of a GS 12/5 regulatory program specialist/engineer to review the applications), including benefits; which we estimate will equal 50% of salary. See http://www.opm.gov/oca/08tables/html/gs_h.asp). The annual cost to the Federal government for this oversight activity is estimated to be **\$4,700** (100 hours per review x 1 review per year x \$47 per hour).

Federal Programs: As discussed in item 12.a. above, we estimate that we will annually receive approximately 2 applications for new permits or permit revisions that involve excess spoil disposal on lands where we are the regulatory authority. We also estimate that we will need an average of 25 hours to review that information in each permit application. At an average salary of \$47 per hour (see explanation in preceding paragraph), the annual wage cost to the Federal government to review those applications will be **\$2,350** (2 applications per year x 25 hours per application x \$47 per hour).

Total Federal Cost

	\$	4,700	Oversight
+	\$	<u>2,350</u>	Federal programs
	\$	7,050	Total Federal cost

15. There are currently 12,660 hours approved for this section. We are now requesting approval of 8,790 burden hours for this section. Because of a program change (the Excess Spoil final rule), we anticipate that the burden for permit applicants will increase by one hour per application for a total of 170 hours for all applications, while the program change will increase the review burden for state regulatory authorities by 7 hours per application for a total of 1,176 hours (7 hours x 168 applications). At the same time, we estimate that the burden will decrease because the unit burden for permit applicants under other provisions of this section has declined from 32 hours to 26 hours. In addition, the number of applications with excess spoil fills submitted each year has declined from 255 to 170, which means that the total burden will decrease by 3,870 hours, as shown below:

$$\begin{array}{r} 12,660 \text{ hours currently approved} \\ + \quad 1,346 \text{ hours because of a program change (the Excess Spoil final rule)} \\ - \quad \underline{5,216} \text{ hours because of a reduction in use} \\ \hline 8,790 \text{ hours requested} \end{array}$$

16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.