

Supporting Statement A

30 CFR Part 778 – Permit Applications – Minimum Requirements for Legal, Financial, Compliance and Related Information

OMB Control Number: 1029-0117

Terms of Clearance: None

General Instructions

A completed Supporting Statement A 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 below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked “Yes,” then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.*

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is submitting this request for Office of Management and Budget (OMB) approval to collect information under 30 CFR Part 778 - Permit Applications – Minimum Requirements for Legal, Financial, Compliance, and Related Information.

The regulatory provisions of 30 CFR Part 778 govern the minimum requirements of information required from applicants in their applications for new permits, as well as for permit revisions that add acreage to the permit area but are not incidental boundary revisions. The requirements include identification of the applicant itself and its operator, if known at the time of application; the identity and address for the resident agent and affiliates of the applicant and operator; identity of the affiliates of the applicant and operator that meet the regulatory definitions at 30 CFR 701.5 of control or controller and own, owner, and ownership; permit history; property interests; violation information; right of entry; the status of any claims of lands unsuitable for mining and reclamation within the proposed permit area; term of the permit; required insurance; and description of any structures or facilities proposed to be used in common with other, separately permitted, surface coal mining operations. The regulatory provisions in 30 CFR Part 778 are authorized under sections 507 and 510 of the Surface Mining Control and Reclamation Act of 1977, as amended, (SMCRA or the Act), 30 U.S.C. 1201.

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.*

The provisions under 30 CFR Part 778 that incur an information collection burden are as follows.

- Section 778.9(a)(1) allows an applicant the benefit to certify by reference that all or part of the information in Applicant Violator System (AVS) concerning the applicant is accurate and complete;
- Section 778.9(a)(2) allows an applicant the benefit to certify by reference that part of the information in AVS concerning the applicant is accurate and complete but that part of the information is missing from or incorrect in AVS.
- Section 778.9(b) requires an applicant to swear or affirm, under oath and in writing that the information provided in an application is accurate and complete.
- Section 778.9(d) requires an applicant, before an application is approved, to update, correct, or indicate no change has occurred in the information required under 778.9, 778.11, and 778.14.
- Section 778.11(a)(1) requires applicants to disclose the legal form of the business entity applying for the permit and the legal form of the business entity proposed as the applicant's operator, if the applicant has retained an operator at the time of application. The reporting entity selects a form from the list of "corporations, partnerships, sole proprietorships, or other." OSMRE is adding the legal form of "associations" to the list as a choice. This change will not affect the reporting burden.
- Section 778.11(a)(2) requires an applicant to disclose the applicant and operator's tax identification number.
- Section 778.11(b)(1) requires an applicant to disclose its name, address, and telephone number.
- Section 778.11(b)(2) requires an applicant to disclose the name, address, and telephone number of its resident agent.
- Section 778.11(b)(3) requires an applicant to disclose the name, address, and telephone number of the applicant's operator.
- Section 778.11(b)(4) requires the identification of each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For each business entity the reporter will identify required information for every president, chief executive officer, director (or person in similar positions), and every person who owns, of record, 10 percent or more of the entity.
- Section 778.11(c) requires an applicant to disclose the name of every officer, partner, member, director, person performing a function similar to a director, and persons who own 10 percent or more of the applicant.
- Section 778.11(d) requires an applicant to disclose in an application the address, telephone number, position title, relationship to the applicant and its operator, percentage of ownership, location in the organizational structure, and beginning date for every person identified in paragraph (c).

- Section 778.12(a) requires an applicant to disclose for itself and its operator all of the business names under which the applicant, operator, and their partners and principal shareholders currently operate or have operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of an application.
- Section 778.12(b) requires an applicant to disclose for it and its operator a list identifying any pending applications filed in the United States.
- Section 778.12(c) requires an applicant to disclose for itself and its operator in an application the name, address, taxpayer identification number, Federal and State permit number, corresponding Mine Safety and Health Administration (MSHA) identification number, regulatory authority with jurisdiction, the permittee's and operator's relationship to the operation, including the percentage of ownership and location in the organizational structure for any surface coal mining operations owned or controlled by the applicant or its operator within the five-year period preceding the date of submission of an application.
- Section 778.13(a) requires an applicant to disclose in an application the name and address for each legal or equitable owner of the surface area and mineral, the leaseholder, and purchaser(s) of record under a real estate contract.
- Section 778.13(b) requires an applicant to disclose in an application the name and address of each owner of all surface and subsurface property contiguous to any part of the proposed permit area.
- Section 778.13(c) requires an applicant to disclose in an application a statement of all interests, or pending bids the applicant holds or have made for lands contiguous to the proposed permit area.
- Section 778.13(d), requires an applicant to disclose in an application the MSHA identification numbers for all structures that require MSHA approval.
- Section 778.14(a) requires an applicant to disclose in an application whether it, its operator, or any subsidiary, affiliate, or other entity which the applicant or operator own or control or which is under common control with the applicant or operator has had a Federal or State permit for a surface coal mining operation suspended or revoked or forfeited a performance bond or similar security during the five-year period preceding the date of submission of the application.
- Section 778.14(b) requires an applicant to disclose in an application for each suspension or revocation of a permit or bond forfeiture, a brief explanation of the facts involved, including the permit number, date of suspension, or forfeiture, the regulatory authority taking the action, the current status of the permit, bond, or similar security, and the date, location, type, and current status of any judicial or administrative proceedings concerning the suspension, revocation, or forfeiture.
- Section 778.14(c) requires an applicant to disclose in an application a list of violation notices received by the applicant and its operator for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition, an applicant is required to submit a list of all unabated or uncorrected violation notices and the associated permit number, MSHA number, issue date, current status, name of the person to whom the notice was issued, the regulatory authority that issued the violation notice, a brief description of the alleged violation, the date, location, type, and current status of any administrative or judicial proceeding

concerning the violation notice, for violation notices where the abatement date has not expired, certify that the violation is being abated or corrected to the satisfaction of the regulatory authority with jurisdiction, or describe actions taken to abate or correct the violation.

- Section 778.15(a) requires an applicant to describe in an application the documents that comprise the legal right to enter and mine the permit area.
 - Section 778.15(b) requires an applicant to submit a copy of the written consent of the surface owner for the extraction of coal by surface mining methods, a copy of the conveyance that expressly grants or reserves the right to extract coal by the surface mining method, or documentation that under applicable State law, the applicant has the legal authority to extract the coal using surface mining methods.
 - Section 778.16(a) requires an applicant to provide in an application the available information as to whether the proposed permit area is within an area designated as unsuitable for mining or is within an area under study for such designation.
 - Section 778.16(b) requires an applicant to provide in an application documents that support any claim for an exemption from an unsuitability determination, including its assertion that it has made substantial legal and financial commitments to the proposed permit area before January 4, 1977.
 - Section 778.17(a) requires an applicant to provide in an application a statement as to the anticipated or actual starting and terminating dates of each phase of the surface coal mining and reclamation operation, and the anticipated number of acres that will be affected over the life of the operation.
 - Section 778.17(b) requires an applicant to provide in an application reasonable justification, in writing by the applicant's proposed source of financing, if the applicant proposes to require more than five years before beginning operations.
 - Section 778.22 requires an applicant to provide plans in an application when facilities or structures are proposed to be shared by two or more separately permitted surface coal mining operations.
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.*

The required information under 30 CFR Part 778 is provided by applicants for permits. Applicants are required to disclose legal, financial, permit history, property, compliance, right of entry, status of lands unsuitable for surface coal mining, proof of publication of the required advertisement, and facilities or structures used in common with other mining operations information in an application. The legal authority for information collected under 30 CFR Part 778 from applicants and States is authorized under SMCRA, at sections 507 and 510.

Most of the information collected in 30 CFR Part 778 is collected electronically. OSMRE and 24 approved State regulatory programs maintain and use AVS for a variety of purposes,

including permitting and enforcement. The industry and general public may also access AVS to view applicant, permittee, permit history, and violation information. OSMRE also provides business information from AVS in electronic form to applicants, operators, and AML contractors on request.

Virtually all State regulatory authorities have the capability of receiving permit applications electronically, either through an ftp site, State web site, or via CD-ROM. Some permit applicants use computer technology to create, store, and submit information electronically, but the percentage varies based on the size of the company and their technical abilities. Larger coal companies have in-house staff or hire engineering firms to prepare their applications. These companies use automated technology to prepare and submit the applications to State regulatory authorities. Small coal companies, which may not have the technical capability or personnel capable of preparing and submitting applications, may still submit paper forms. Once the State regulatory authorities receive paper applications, some will convert the applications to an electronic format for review and processing. The states with the greatest number of permit applications, such as Pennsylvania, West Virginia, and Kentucky, receive 100% electronically, while other states receive 0%. Nationally, OSMRE estimates that the State regulatory authorities receive approximately 75% of permit applications electronically.

It must be noted that the vast majority of permit applications are received by States where OSMRE does not have the authority to require electronic submissions of permit applications. OSMRE can only recommend using electronic methods to improve efficiency and reduce the number of copies submitted.

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.*

The required information under 30 CFR Part 778 is unique to each surface coal mining operation. No other source of the information is available. Respondents are companies in the coal mining business who apply for new permits and other permitting actions. Applicants must comply with the statutory information disclosure requirements for applications.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

There are no special provisions for small businesses or other small entities under these regulations. However, OSMRE does have a small operator assistance program, regulated under 30 CFR Part 795, which provides financial assistance to small operators to pay qualified laboratories to collect and analyze specific data for coal mining permits, which has a separately approved information collection clearance number.

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.*

Respondents provide information required by 30 CFR Part 778 only at the time of application for a new permit, when changes occur requiring information updates or other permitting actions. Less frequent collection of the information would compromise the accuracy and completeness of information required for nationwide permitting and enforcement purposes and would not be in compliance with the Act.

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.*

The information collection under 30 CFR Part 778 is consistent with 5 CFR 1320(d)(2), except the number of applications requested by the State regulatory authorities. States will require from one to five copies of permit applications depending on the State and whether they receive electronic or paper copies. States are progressing towards e-permitting where they only require one copy.

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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.

We contacted two state regulatory authorities (SRA) and two operators that prepare mining permit applications. We supplied a concise description of the type of information collection burden imposed by 30 CFR Part 778, the currently approved burden, along with a request for their estimates of burden associated with the information collection requirements, and any other comments they wished to make regarding the clarity of the rules and potential burden.

Assistant Director
Technical Services / Inspection and Enforcement
Indiana Department of Natural Resources
Jasonville, IN 47438

Permitting Manager
Division of Mineral Resources Management
Ohio Department of Natural Resources
Cambridge, OH 43725

Manager, Land Acquisition and Permits
White Stallion Energy
Evansville, IN 47715

Manager of Permit Applications
Murray Energy
St. Clairsville, OH 43950

We also contacted an OSMRE employee to determine burden estimates by Federal government employees where they are acting as the regulatory authority for a particular state or tribe:

Chief, Program Support Branch
OSMRE
Knoxville Field Office
Knoxville, TN 37902

The Federal and industry officials agree that the current information collection requirements in 30 CFR Part 778 for industry respondents are somewhat burdensome. However, they also agree that the information required in 30 CFR Part 778 is required under the Act and is

necessary for the permitting process. Federal, State, and industry respondents provided burden estimates which have been incorporated into this information collection request.

On September 5, 2018, OSMRE published in the Federal Register (83 FR 45139) 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.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

OSMRE does not provide payments or gifts to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

No confidential information is solicited or required under the information collection requirements for 30 CFR Part 778. If an applicant identifies information in an application it wants to remain confidential, regulatory authorities rely upon the provisions at 30 CFR 773.6(d) to ensure confidentiality of qualified information. There are limitations to information that may qualify for confidentiality.

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.*

No sensitive information is solicited or required under the information collection requirements for 30 CFR Part 778.

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.
- * 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.

Estimated Information Collection Burden

a. Burden Hour Estimates for Respondents

OSMRE has estimated wage costs for respondents: industry and State regulatory authorities. OSMRE has derived these wages from the Bureau of Labor Statistics (BLS) websites at http://www.bls.gov/oes/current/naics4_212100.htm for industry wages and http://www.bls.gov/oes/current/naics4_999200.htm for State employees. Benefits have been calculated using a ratio between wages and benefits using a rate of 1.4 of the salary for industry personnel and 1.6 for State employees per the BLS news release USDL-18-1499 entitled EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—JUNE 2018 at - <http://www.bls.gov/news.release/pdf/ecec.pdf>, dated September 18, 2018.

This information collection submission will result in an increase of 158 hours to the information collection burden for 30 CFR Part 778. This estimate is based upon data collected for the 2016-2018 evaluation years. Some calculations have been rounded.

Summary
Information Collection
30 CFR Part 778

SECTION	APPLICANT RESPONSES	STATE RESPONSES	BURDEN PER APPLICANT	BURDEN PER STATE	CURRENTLY APPROVED HOURS	TOTAL HOURS REQUESTED	CHANGE TO BURDEN
778.9	522	0	1.214	0	628	634	6
778.11	44	0	8.82	0	512	388	-124
778.12	44	0	5.613	0	288	247	-41
778.13	44	0	6.2	0	168	273	105
778.14	44	0	3.225	0	192	142	-50
778.15	177	175	5	3	1,290	1,410	120
778.16	115	114	6	1	734	804	70
778.17	177	175	2	1	484	529	45

778.22	27	27	8	1	216	243	27
TOTALS	1194	491			4512	4670	158

b. Estimated Wage Cost to Respondents

Based on discussions with those identified in item 8 and OSMRE experience with this information, we estimate the following wage costs required to complete the collection for this part:

Position	Total Hours for all Respondents	Cost Per Hour (\$)	Cost per Hour w/ benefits of 1.4 (\$)	Total Wage Burden (\$) (Rounded)
Administrative Support	479	32.80	45.92	21,996
Mining Engineer	2,872	42.69	59.77	171,659
Operations Manager	478	60.01	84.01	40,157
Total	3,829			233812

Therefore, the estimated total annual cost for industry respondents for part 778 is \$233,812.

In addition, based on discussions with those identified in item 8, it will take the State regulatory authorities 841 hours to review, process, and complete the information required for this part. An environmental scientist with the State regulatory authorities earns \$31.67 per hour, or \$50.67 including benefits. The estimated annual cost to State regulatory authorities is estimated to be \$42,613 (841 hours x \$50.67 per hour).

Therefore, the total cost to all respondents under 30 CFR part 778 is estimated to be \$276,425.

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 already reflected in item 12.)*

** 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 for form processing). 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.*

The information collection requirements for part 778 do not involve any capital or start-up costs apart from expenditures associated with customary business practices, nor do they contain significant or distinct non-wage operations or maintenance costs.

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.*

OSMRE has also estimated wage costs for Federal employees. Wage estimates for OSMRE employees discussed in the sections below are derived from the Office of Personnel Management's website at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/RUS_h.pdf, and include benefits using a 1.6 multiplier from the ratio between wages and benefits derived from the BLS news release USDL-18-1499.

Oversight. In keeping with the current guidance concerning oversight of State program implementation, OSMRE does not anticipate significant oversight review of State compliance with part 778 in the absence of indication of problems. OSMRE estimates it will conduct an oversight review of this section in one State per year. The annual hourly salary used to estimate the wage cost to the Federal government is \$39.85 per hour for a GS 12 step 5 reclamation specialist, or \$63.76 per hour when including the 1.6 factor for benefits.

Federal Programs: Where OSMRE is the regulatory authority, we estimate receiving 2 applications per year. The following burden to review and process the application using \$63.76 per hour).

Summary of Federal Burden

Section	Total Burden Hours for Federal Oversight	Total Burden Hours in Federal Program States	Total Federal Burden Wage Costs (\$63.76 per hour)
778.9	40	0	\$2,550
778.11	40	0	\$2,550
778.12	40	0	\$2,550
778.13	40	0	\$2,550
778.14	40	0	\$2,550
778.15	8	6	\$893
778.16	4	1	\$319
778.17	8	2	\$638
778.22	2	0	\$128
TOTALS	222	9	14728

15. *Explain the reasons for any program changes or adjustments in hour or cost burden.*

This information collection request increases the approved burden for part 778 by 158 hours primarily due to a slight increase in the number of respondents.

4,512 hours currently approved
+ 158 hours due to adjustments
4,670 hours requested

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.*

OSMRE has no plans to publish the information collected for 30 CFR Part 778. However, public information disclosed under 30 CFR Part 778 is entered and maintained in AVS.

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.*

OSMRE does not seek a waiver from the requirement to display the expiration date of the OMB approval of the information collection under 30 CFR Part 778. The OMB control number for this Part is 1029-0117 and is found at §778.8.

18. *Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

There are no exceptions to the certification statement.