Supporting Statement for Paperwork Reduction Act Submission: 30 CFR Part 750 - Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

OMB Control Number 1029-0091

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.*

   Section 710 of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 et seq., provides for a two-phase program for the regulation by the Secretary of the Interior of surface coal mining operations on Indian lands. Section 710(c) describes the first phase and states "on and after 135 days from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 515(b)(2), 515(b)(3), 515(b)(5), 515(b)(10), 515(b)(13), 515(b)(19), and 515(d) of this Act." Section 710(d) of the Act describes the second phase for regulating mining on Indian lands. Section 710(d) requires compliance

with sections 507, 508, 509, 510, 515, 516, 517, and 519 of the Act "on or after 30 months from the enactment of this Act." The regulations in 30 CFR Part 750 implement the sections of the Act specified in section 710(d) and were promulgated on September 28, 1984 (49 FR 38462). The regulations in 30 CFR Part 750 also implement other sections of the Act that are otherwise applicable either by necessary implication from one or more of the listed sections of the Act or because the sections are applicable to all mining.

Operators proposing to conduct surface coal mining and reclamation operations on Indian lands must comply with the permitting and approval requirements of 30 CFR Part 750. The requirements of Part 750 cross-reference the applicable requirements of the permanent regulatory program as well as specifying those additional information requirements that are unique to Indian lands. However, since the information collection requirements imposed by the permanent regulatory program have been approved by the Office of Management and Budget (OMB) under separate parts, this justification addresses only those additional information collection requirements imposed by Part 750.

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.]*

Section 750.12(d) lists the additional information requirements specific to permit applications for surface coal mining and reclamation operations on Indian lands. Permit application information is submitted by applicants for coal mining permits to the regulatory authority, the Office of Surface Mining Reclamation and Enforcement (OSM), in this case, the Western Regional Center in Denver, Colorado.

Subsection (1) of §750.12(d) requires submission of the mining plan required to be submitted by 25 CFR 216.7 or 43 CFR Group 3400. OMB has approved this information collection requirement separately. Subsection (2) of §750.12(d) contains nine additional information collection requirements. The first, §750.12(d)(2)(I), requires "the

description of the proposed surface coal mining and reclamation operation with respect to (A) increases in employment, population, and revenues to public and private entities; and (B) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations." This information is needed by the regulatory authority to prepare documentation in compliance with the National Environmental Policy Act (NEPA).

Section 750.12(d)(2)(ii) requires an "evaluation of impacts to the scenic and aesthetic resources, including noise, on the surrounding area due to the proposed surface coal mining and reclamation operation." This information is also needed by the regulatory authority to prepare documentation in compliance with NEPA.

Sections 750.12(d)(2)(iii) and (iv) require information on cultural or historical sites eligible for listing or listed on the National Register of Historic Places. This information assists the regulatory authority in ensuring compliance with the National Historical Preservation Act of 1976, the Archeological Resources Protection Act of 1977, and other related requirements pertaining to cultural and historical resources. However, this information requirement is a restatement of the permanent program requirement in 30 CFR 779.12(b), which has received separate approval from OMB and, therefore, 30 CFR 750.12(d)(2)(iii) and (iv) are not included in this information collection approval request.

Section 750.12(d)(2)(v) requires the prospective permittee to submit a "description of compliance with Federal laws aimed at protecting cultural resources on Indian lands." This information is required to be submitted in order to ensure that cultural resources on Indian lands will be protected. This section also requires that permit applicants submit information to comply with the American Indian Religious Freedom Act at OSM's request.

Section 750.12(d)(2)(vi) requires a description of the probable changes in air quality resulting from the proposed mining operation and any necessary measures to comply with the prevention of significant deterioration limitations and any other Federal laws for air quality protection. This information will allow a determination of compliance with

the Clean Air Act. Information to show compliance with the Clean Air Act is also required under 30 CFR 780.18(b)(9) which has received separate OMB approval; therefore, 30 CFR 750.12(d)(2)(vi) is not included in this information collection approval request.

Subsections 750.12(d)(2)(vii) through (ix) require information pertaining to fish and wildlife resources to assist in evaluating compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, and other related requirements. These subparagraphs require (1) a description of the location, acreage, and condition of important habitats of selected indicator species located within the permit and adjacent areas of the proposed surface coal mining and reclamation operation, (2) a description of active and inactive nests and prey areas of any bald or golden eagles located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations, and (3) a description and special studies, if required, of all threatened and endangered species and their critical habitats located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations. Collection of this information is also authorized under 30 CFR 780.16, which has received separate OMB approval, and 30 CFR 750.12(d)(2)(vii) through (ix) are therefore not included in this approval request.

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.].*

This information is unique to each applicant and mining area. Respondents are individual mining companies who apply for permits on an as-needed basis, and the State regulatory authorities (SRA's) who must review and approve the permit applications. OSM continues to work with SRA's and coal companies to develop procedures for the preparation and processing of permit applications electronically. Progress has been made in virtually all coal-producing states to use

electronic and information technology to submit and receive permit applications which improve efficiency and reduce the time and cost burden to permit applicants and SRA's. OSM continues to actively support SRA's implementation of electronic submissions of permit applications and other reports normally conducted by paper. OSM currently estimates that 33% of applications are received electronically, with some SRA's in the early stages of electronic exchange, while others receive 95% of permit applications on CD's. However, significant revisions on Indian lands are currently being submitted in paper form due to the significant time required to convert the original permit and prior revisions into an electronic format for the new revision. OSM anticipates that we will continue receiving only hard copies of permit revisions on Indian lands (the vast majority of all permitting activity on Indian lands) for a few more years, while we may start to see electronic versions of new permits in the next few years.

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.*

   Since circumstances vary with each situation in which mining permits are requested, there is no other information which can be used in lieu of that supplied in each application. No similar information pertaining to Indian lands is collected by other Federal agencies.

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.*

   There are no special provisions or exceptions for small businesses or other small entities; however, small organizations may be eligible for assistance under the Small Operators Assistance Program. As in the case of all requests for information, the information required is limited to the minimum necessary to determine whether there will be major impacts to the environment from the proposed mining operation.

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.

The information is collected only at the time an application for a mining permit is submitted. Thus, there is no opportunity to reduce the frequency of collection.

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.*

Guidelines in 5 CFR 1320.5(d)(2) require that no more than one original and two copies of a permit application be submitted. However, OMB has authorized OSM to receive additional copies of permit applications for surface coal mining operations on Indian lands. Normally, a minimum of eight copies are required by OSM for proposed Indian lands operations for use and distribution as follows: one copy each to the Bureau of Indian Affairs, Bureau of Land

Management (mining plan review), and the affected Indian tribe; one file copy for public review at the regional office; one file copy for public review at the appropriate OSM field office; one copy for internal permit application review by the responsible OSM permitting unit; one copy for the OSM inspector; and one approved copy which is returned to the operator. Additional copies of permit applications are required by OSM if the proposed operation involves more than one Indian tribe and any additional federal agencies not mentioned above. On the Black Mesa Mine, two Indian tribes along with their chapter houses and 4 federal agencies were all involved in the permit application review process. In this instance 11 copies were required.

OSM continues to strongly urge that permit applications for Indian lands (and Federal lands) be submitted through electronic means to reduce the number of copies and ease the process of review. Permit applicants and applicants seeking permit revisions on Indian lands have been reluctant to do so, but OSM is beginning to have some success with receiving electronic submissions for new and revised permit applications on Indian lands which allow for reduced number of copies.

Generally, SRA's in primacy states request the appropriate one original and two copies. Also, many SRA's promote electronic submissions as a method to reduce applicant costs and promote SRA review.

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.

Proposed regulations at 30 CFR Part 750 were published on October 24, 1983 (48 FR 49174). The final rule at 30 CFR Part 750 was published on September 28, 1984 (49 FR 38462), and was subsequently challenged by States and industry. On February 10, 1988, OSM published a proposed rule to clarify and amend the preamble and regulations for the Indian lands program in accordance with the terms of settlement agreements reached in two of the rule challenges (53 FR 3992). The final rule at 30 CFR Part 750, as amended, was published on May 22, 1989 (54 FR 22182).

In November of 2007, OSM contacted employees of three mining companies currently holding OSM permits to conduct surface coal mining operations on Indian lands. Each company has the responsibility of preparing permit applications and permit revisions pursuant to 30 CFR Part 750. One company out of three contacted responded, Darrel Myran represents Westmoreland Resources, Inc. His contact information is as follows:

Darrel Myran
Vice President
Westmoreland Resources, Inc.
P.O. Box 449
Hardin, MT 59034
(406) 342-4502

Mr. Myran is the Vice President for Westmoreland Resources Inc. which holds an OSM permit for land located on the Absaloka Mine, near Hardin, Montana and the Crow Indian Reservation. Mr. Myran expressed concerns about reporting procedures on joint jurisdiction lands. On the Absaloka Mine, the coal is tribal while the land surface is non-tribal, therefore the operator must report to both the State

of Montana and OSM. This situation has lead to segregation amongst the permitting staff and enforcement staff and an overall disconnect that makes for a difficult application process. OSM attempted to resolve this issue, was sued and lost in court. In addition, Mr. Myran stated that the company has been reluctant to submit electronically due to the Cobell v. Norton litigation.

On February 1, 2008, OSM published in the Federal Register (73 FR 6203) 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.*

Not applicable. No payments or gifts are provided to respondents.

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

Not applicable. No confidential information is solicited.

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.*

Not applicable. Sensitive questions are not asked.

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.*

Reporting and Reviewing Burden.

a. Annual Respondent Burden:

OSM receives an average of either one new permit or significant revision a year subject to the additional information requirements of 30 CFR Part 750. This information was obtained from OSM's Western Regional Center in Denver, Colorado, where Indian Lands are located.

OSM estimates, based on recent discussions with the applicants, approximately 1,300 hours per new application or significant revision is required to prepare the additional information required for Indian lands mines.

The total burden placed on industry for new permits and permit revisions for the information collection activity is 1,300 annual burden hours.

b. Estimated Cost to Respondents:

Using U.S. Department of Labor’s Bureau of Labor statistics for mining companies found at http://www.bls.gov/oes/current/naics4_212100.htm and http://www.bls.gov/oes/current/oes192041.htm we estimate the

following wage costs (rounded) required to complete the collection for this section (wage costs include benefits calculated at 1.4 of hourly wages):

Industry Wage Cost

Position	Hour Burden per Response	Cost Per Hour ($)	Total Wage Burden ($)
Clerical	65	18.40	1,196
Environmental Scientists	780	41.13	32,081
Mining Engineer	390	46.82	18,260
Operations Manager	65	63.72	4,142
Total	1,300		55,679

Therefore, the estimated total annual wage cost for industry respondents for Part 750 is $55,679.

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.*

Total Annual Cost Burden.

a. Capital and Start-up Cost: A base processing fee of $3,600 is assessed to each new permit application on Indian lands. An additional processing fee is assessed based on the number of acres to be disturbed which increases the cost of processing each application. The total processing fee is approximately $15,000 annually.

b. Operations and Maintenance: Not applicable. There are no operations and maintenance requirements associated with this information collection once submitted beyond customary business 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.*

Estimated Cost to the Federal Government.

OSM reviews all Indian lands permit applications and revisions. Based on recent compilations, OSM spends approximately 2000 hours per year reviewing new permits/significant revisions with Indian lands-related

information. This information was received from OSM's Western Regional Center. Using $56 per hour (including a multiplier of 1.5 for benefits) for a GS 13 step 5 Federal employee (http://www.opm.gov/oca/08tables/html/gs_h.asp), OSM estimates the annual cost of reviewing the Indian lands-related information contained in the applications to be $112,000 (2000 hours/year x $56).

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.*

The estimated change in burden for Part 750 changes as follows:

	1,400 hours currently approved
-	100 hours due to an adjustment in use
	1,300 hours requested

In prior collection requests OSM estimated that we would receive 75 non-significant and significant revisions on Indian lands per year requiring 12 hours each, or 900 hours annually to prepare. However, non-significant revisions generally do not require information collection specific to this Part. Further, OSM generally only receives one significant revision or new permit each year, each requiring approximately 1,300 hours preparing the Indian lands portion of the application.

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.*

There are no plans for publication of this information.

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.*

Not applicable.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork*

Reduction Act Submissions," of OMB Form 83-I.

Not applicable. OSM is not requesting exceptions to item 19 of OMB 83-I.