

Supporting Statement A
30 CFR Part 705 - Restriction on Financial
Interests of State Employees (Form OSM-23)

OMB Control Number 1029-0067

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.***

30 CFR Part 705, in accordance with Section 517(g) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 ("SMCRA" or "Act"), requires that no employee of the State regulatory authority performing any function or duty under the Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. This requirement also applies to members of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests. The information required by this Part is needed to determine that no direct or indirect financial interests exist.

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 information will be used by the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the State regulatory authority to determine who shall file a financial disclosure statement. It will also be used by OSMRE and the State regulatory authority to assure that no employee has a direct or indirect financial interest in any underground or surface coal mining operation. In determining who shall file, the head of the State regulatory authority shall submit to the Director, OSMRE, a list of positions and boards or commissions not performing functions or duties under the Act. For monitoring reasons, the list must contain a written justification for inclusion. It is this rationale and not the rationale for including positions under the Act that is most likely to be requested by members of Congress or others who wish to review the application of Section 517(g). Those serving in positions not exempted from the provisions of Section 517(g) shall file a statement of employment and financial interests. The head of the State regulatory authority shall file his or her statement with the Director, OSMRE. All others shall file their statements with the head of the State regulatory authority.

Section 705.11(a) requires all State employees to file financial statements, section 705.11(b)-(d) requires the head of each State regulatory authority to list positions exempted from the filing requirement, and section 705.17(a)-(b) specifies what information must be reported and the required certification. Failure to collect this information would mean that the monitoring, enforcing and reporting responsibilities of the Secretary of the Interior as stated in Section 517(g) would not be accomplished.

To implement and monitor the provisions of Section 517(g) and 30 CFR Part 705, OSMRE designed OSM Form-23 (Form). The Form is divided into five parts or sections. Parts I through III collect information concerning financial interests, real property, employment and creditors. This information is utilized to identify potential conflicts of interests as defined by Section 517(g) and 30 CFR 705.5. This information includes not only the employee's own interests but those of the spouse, minor child, or other relatives who are full-time members of the employee's home.

Disclosure of this information will bring to the reviewer's attention any prohibited interest the employee may be deriving from these sources. Part IV of the Form requires the employee to certify that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee. Part V provides for the reviewer's comments and certification that listed prohibited interests, if any, have been resolved. This Form is mandatory.

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.***

Electronic submission of this information is limited to email submissions, since Form OSM-23 contains confidential personal financial information. The OSM-23 is available on OSMRE's forms web page at the following link: <http://www.osmre.gov/resources/forms/OSM23.pdf>. The Form is available in PDF and Word format so that employees may complete the Form electronically and provide to their State ethics officers for review. The burden of the State employees and the State ethics officers constitutes almost the entire burden associated with this collection, and OSMRE does not dictate to the States by what method their employees are to submit forms internally.

Those OSM-23 forms submitted to OSMRE by the 28 heads of the State regulatory authorities are submitted by email or in paper form which is mailed. Although they may complete the forms electronically as their employees do, they submit the forms to OSMRE on paper and mailed to OSMRE, or by email.

The list prepared by the State regulatory authority which exempts certain positions from the conflict of interest provisions may be sent to OSMRE electronically, via email, at the State's discretion.

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 information requested is unique to the State regulatory authority and its employees. Also, the data reported on the Form is subject to change on a yearly basis. Consequently, there is no other available information which can be used in lieu of that supplied. While some States do require their employees to file a financial interest form, those forms are not sufficient to satisfy OSMRE's requirements under SMCRA. However, OSMRE continues to explore ways to minimize burden with the States.

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

Not applicable. No information is collected from small businesses or entities.

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.***

Information collection frequency meets the requirements of Section 517(g) of the Act. This information is collected annually as required by SMCRA; any deviation from an annual collection of this information would violate SMCRA.

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 Part 1320.5(d)(2) are not exceeded.

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.

During the process of reviewing State program submissions, each State seeking approval of its program was required to

submit provisions for reviewing, monitoring and enforcing restrictions against direct and indirect financial interests of State employees. In each case, the State submitted copies of forms required of its employees, in addition to the OSMRE form. In an overwhelming number of cases, States that had their own forms in the past that did not contain all the information needed to monitor the provisions of Section 517(g), have now chosen to use only the OSMRE Form. These rules were finalized in the Federal Register on September 17, 1991.

On April 17, 2014, OSMRE interviewed two State representatives who are involved with the implementation of the regulations at 30 CFR Part 705:

John R. Baza
Director
Utah Department of Natural Resources
Suite 12010
1594 West North Temple
PO Box 145801
Salt Lake City, UT 84114-5801

Mr. Baza reported that his annual review of the approximately 60 OSM-23 reports requires approximately one hour of his time. Mr. Baza added that his administrative assistant spends approximately four hours annually on mailing the OSM-23 reports to those required to file. Electronic submission would shorten the amount of time required in the administration of the collection, according to Mr. Baza.

Please note that OSMRE is researching the feasibility of electronic submission of OSM-23 reports.

Although the instructions are clear for completing the form, Mr. Baza would prefer that the OSM-23 be collected less frequently, perhaps once every three years. Utah's collection of financial information occurs every three years, which would also suffice for OSM-23 purposes, Mr. Baza stated. Mr. Baza stated that completing the Form is not difficult after one has reviewed their financial information and completed the OSM-23 once and can be accomplished within 5 minutes or less.

Please note that OSMRE responded to Mr. Baza by explaining that the implementing regulations of SMCRA at 30 CFR 705 require that OSMRE report the information collected by the OSM-23 Form every year. Mr. Baza was already aware of the SMCRA requirements and agreed that annual collection of the data collected by the OSM-23 Form is necessary.

Cher Szerokman
Administrative Services Assistant
Office of Administration
Employee Relations
Room 3020
West Virginia Department of Environmental Protection
601 57Th St
Charleston, WV 25304

Ms. Szerokman stated that completing the Form requires less than five minutes. Ms. Szerokman stated that the time she spends reviewing a Form differs from a few seconds to up to an hour. The forms that require an hour of her time are those on which the employee did not provide enough detail.

The Form's instructions, in her opinion, would be improved if requesting more details and stating what need not be reported.

Please note that Ms. Szerokman stated that only rarely does a filer omit required information and such a filer is usually filing for the first time.

Ms. Szerokman provided an example of a Form that would require an hour or more of her time as one where the filer did not report the names of his investments. Ms. Szerokman emails or calls the filer to obtain more information and sometimes researches a company to determine whether a company is involved in coal mining. Also, filers who own land should be instructed to indicate whether or not the owner has leased mineral rights or has coal on the property.

Collecting the Form annually is sufficiently frequent, according to Ms. Szerokman. Ms. Szerokman stated that she spends an average of 30 minutes to prepare and submit a listing of positions in the West Virginia Department of Environmental Protection that are exempted from the conflict of interest provisions each year for a total of 30 minutes.

Also, Ms. Szerokman stated that if the Form were collected and signed electronically, less time would be spent in the administration of its collection annually.

Both individuals provided burden estimates which are the basis for the estimates discussed in item 12, below.

On April 3, 2014, OSMRE published in the Federal Register (79 FR 18695) 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 gifts or payments are made to respondents other than their grant funding.

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

Maintenance of the Form by the State regulatory authority is subject to State law. Pursuant to 30 CFR Part 705.4 the Form may be inspected by or provided to representatives of the U.S. Department of the Interior. If the Form is provided to representatives of the U.S. Department of the Interior, the Form will be subject to the requirements of Federal law, including the Privacy Act of 1974, 5 U.S.C. 552(a). A system of records (Interior/OSM-8) has been established under the Privacy Act for those forms maintained at the Federal level.

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.

The reporting requirements of 30 CFR Part 705.17 are sensitive in nature due to the personal financial information which must be submitted in order to determine whether an employee has a prohibited interest, in violation of Section 517(g) of SMCRA.

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. Instead, this cost should be included under "Annual Cost to Federal Government."***

a. Estimate of Respondent Reporting Burden

State regulatory authorities. It will take each of the 24 State regulatory authorities an average of 30 minutes to prepare and submit a listing of positions in the State regulatory authority exempted from the conflict of interest provisions each year for a total of 12 hours. [30 CFR 705.11(b), (c), & (d)]

24 respondents x 30 minutes = 12 hours

State employees. State employees who must file the conflict of interest statement (including 28 State Directors) with their State ethics officer will take an average of approximately 5 minutes to comply with this requirement when prepared appropriately. [30 CFR 750.11(a)]. This Form is mandatory.

2,496 respondents x 5 minutes = 208 hours

State ethics officers. The 24 State ethics officers must review each conflict of interest statement submitted by the State employees. It will take an average of approximately 5 minutes to review each form.

2,496 responses x 5 minutes = 208 hours

The combined total burden for this requirement is 12 hours + 208 hours + 208 hours or **428 hours**.

b. Estimated Wage Cost to Respondents

We are estimating salaries using Bureau of Labor Statistics (BLS) estimates for State government Human Resources Specialists of \$44.40 per hour (see http://www.bls.gov/oes/current/naics4_999200.htm). This wage cost includes a multiplier of 1.5 for benefits as described by the BLS news release, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION – December 2013 (released March 12, 2014), USDL 14-0390. (See www.bls.gov/news.release/pdf/ecec.pdf.)

Based on an average salary of \$44.40 per hour, the annual cost for each State regulatory authority to prepare the list of exempt positions would be 30 minutes x \$44.40 = \$22 (rounded). The cost to all States would be \$22 x 24 responses = \$528.

Based on a wage cost estimate from BLS of all State employee occupations (see http://www.bls.gov/oes/current/naics4_999200.htm#00-0000), including the 1.5 ratio for benefits, the cost per State employee who must complete the financial disclosure Form would be 5 minutes x \$37.02 or \$3.09. The total cost for all State employees would be 2,496 responses x \$3.09 or \$7,713.

The cost per State ethics officer to review each financial disclosure form would be 5 minutes x \$44.40 or \$3.70. The total cost for all State ethics officers would be 2,496 x \$13.82 or \$9,235.

The total cost for all respondents would be \$528 + \$7,713 + \$9,235 or \$17,476.

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.***

There are no costs associated with this collection of information beyond that indicated in item 12 above.

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.***

The OSMRE ethics officer will review each of the submissions from the 24 State regulatory authorities. We assume an average salary of \$40.99 at a GS 14/1 level (http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/GS_h.pdf) x 1.5 for benefits as described by the BLS news release, USDL 14-0390 (www.bls.gov/news.release/pdf/ecec.pdf) = \$61.49 for the ethics officer. It will take OSMRE an average of 30 minutes (1/2 hour) annually to review the listing submitted by each State regulatory authority of the positions exempted from the conflict of interest provisions, for a total of 12 hours. Based on an average salary of \$61.49 per hour, the annual cost to the Federal government would be 24 x \$61.49 x 1/2 hour or \$738.

In addition, OSMRE must review the financial disclosure forms submitted by the heads of each State regulatory authority. There are 28 heads of the 24 State regulatory authorities (Texas and North Dakota are headed by 3-member commissions). It will take OSMRE an average of 20 minutes (1/3 hour) annually to review the conflict of interest statements submitted by the 28 heads of the State regulatory authorities. Based on an average salary of \$61.49 per hour, the annual cost to review the 28 submissions would be 28 x \$61.49 x 1/3 of an hour, or \$568.

Through oversight that de-emphasizes process reviews, OSMRE does not anticipate conducting any reviews of State compliance with the requirements of 30 CFR 705 in absence of any indication of problems. Assuming OSMRE conducts an oversight review of this topic in two State programs per year and that each review will take 30 minutes (1/2 of an hour), the annual cost to the Federal government for this

oversight activity is an estimated \$61 (1 hour X \$61.49 per hour).

Total cost to the Federal government = \$738 + \$568 + \$61, or \$1,367.

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

The burden hours contained in this request differs from that currently approved by the Office of Management and Budget. There has been an increase in the number of State employees who submit financial disclosure forms, from 1,809 to 2,496, an increase of 687 respondents since OMB last approved this collection. Likely due to filers' familiarity with the Form and with recent computer programs allowing for ease of scanning, saving and searching for past Forms, the approximate time spent by State employees completing the Form has decreased substantially (from 20 to 5 minutes) and the approximate time spent by State ethics officials aiding filers in completing the Form (a task we include in State ethics officer's review of the Form in Number 12(b) above) has decreased from 20 to 5 minutes. Therefore, despite a substantial increase of 687 in the number of State employees (from 1,809 to 2,496) who submit the Form, this request adjusts the burden as follows:

1,218 Hours currently approved
- 790 Hours due to adjustments
<hr/>
428 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.***

This is an ongoing information collection with no ending date and no plans for publication. Information is collected as employees enter on duty and annually.

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. OSMRE is not seeking a waiver from the requirement to display the expiration date of the OMB approval of the information collection.

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

Not applicable. There are no exceptions to the statement identified in "Certification for Paperwork Reduction Act Submissions."