

# 1 Supporting Statement A

## 30 CFR Part 733 - Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

OMB Control Number 1029-0025

Terms of Clearance: None

### Introduction

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is submitting this information collection clearance package to renew its authority to collect information under 30 CFR Part 733, which is entitled "Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs." OMB previously reviewed and approved this collection of information requirements under control number 1029-0025.

The regulations at 30 CFR Part 733 primarily implement §§ 504(b) and 521(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which establish the authority and procedures by which OSMRE may substitute Federal enforcement for State enforcement of an approved State regulatory program when the State fails to enforce the approved program. Section 521(b) also establishes the authority and procedures by which OSMRE may withdraw approval of a State regulatory program.

Only one provision of Part 733 contains information collection requirements that require approval under the Paperwork Reduction Act. Those requirements appear in 30 CFR 733.12(a)(2), which is discussed below.

### 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

#### A. Justification

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

Section 733.12(a)(2) provides that any interested person may request the Director of OSMRE to evaluate an approved State regulatory program. That rule requires that the request set forth a concise statement of facts which the person believes establishes the need for the evaluation. The Director must verify the allegations and determine within 60 days whether an evaluation will be made and mail a written decision to the requestor. The authority for this provision arises from section 102(i) of the Act, which specifies that one of the purposes of the Act is to “assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act.”

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.*

OSMRE uses the information provided by the requestor to determine whether there is sufficient basis for initiating an evaluation of a State regulatory program and, if so, which areas of the State program should be evaluated. Allowing individuals to request an evaluation is consistent with the provision of the Act that encourages public participation in the enforcement of State regulatory programs. It also may assist OSMRE in overseeing the administration and implementation of State programs.

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.*

OSMRE will accept requests submitted by electronic means. Nothing in the rule provides otherwise. To date, most requests have been submitted electronically and are followed up in letter form with an original signature.

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.*

Duplication of information collection is not an issue here because each request for evaluation that an individual submits is unique. To the extent that any similar information may exist, the person submitting the request may use that information in

preparing the concise statement of facts. Conversely, OSMRE will use any similar information that may exist in determining what action to take on the person's request.

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

The collection of information required by this rule is unlikely to impact small businesses or small government jurisdictions because those entities are unlikely to submit requests for evaluation of State programs. While small nonprofit organizations may submit requests on occasion, the burden to do so is minimal because the rule requires only a concise statement of facts.

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.*

Submission of a request for evaluation under this rule is voluntary. There likely would be no consequences to Federal program or policy activities if this collection of information was not conducted. However, eliminating the option for an individual to submit such requests would be inconsistent with one of the purposes of SMCRA, which is to encourage public participation in the enforcement of State regulatory programs. No reduction in frequency is feasible because submission of each request is a one-time event.

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.*

This collection of information conforms to the guidelines in 5 CFR 1320.5(d)(2).

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.*

OSMRE received four requests for evaluations of State regulatory programs since the last time that OMB renewed its approval of the information collection authority for 30 CFR Part 733.

The first request was dated January 30, 2013, from Josh S. Tatum of Plews Shadley Racher & Braun LLP, 1346 North Delaware Street, Indianapolis, IN, (317-637-0700) on behalf of citizen and former miner Bil Musgrave (correct spelling), with respect to Indiana needing an immediate amendment to conform with the Surface Mining Control and Reclamation Act of 1977 and the regulations governing requirements for the release of performance bonds. The request consisted of 8 typed pages.

The second request was a 19-count allegation letter dated June 24, 2013, received from 18 organizations (including Earthjustice, National Wildlife Federation, Sierra Club, West Virginia Environmental Council, and the West Virginia Highlands Conservancy) with respect to West Virginia not properly implementing, administering, enforcing, and maintaining its regulatory program. The letter was signed on behalf of all 18 petitioner organizations by James G. Murphy, Senior Counsel for the National Wildlife Federation, 149 State Street, Montpelier, VT 05602 (telephone number 802-595-5268). The request consisted of 102 typed pages, including charts, photographs, detailed evaluations, and hundreds of citations.

The third request consisted of three similarly related letters from citizens claiming that inspectors from the Oklahoma Department of Mines haven't done their jobs properly in assuring that mines are being reclaimed in accordance with State and Federal laws. One mine in particular was singled out as an offender. These three requests were from:

1. Lee Teasley, Stigler, OK, dated July 22, 2013, on behalf of 14 citizens who signed the petition. The request consisted of 1 typed page, and an additional 2 signature pages.
2. John Hambrick, Cameron, OK, dated July 29, 2013, on behalf of 36 citizens who signed the petition. The request consisted of 1 typed page, and an additional 5 signature pages.
3. Peggy J. Hambrick, Poteau, OK, dated August 26, 2013, on behalf of 12 citizens who signed the petition. The request consisted of 3 typed pages, and an additional 2 signature pages.

The fourth and final request was dated March 17, 2014, from the not-for-profit citizen group Citizens Opposing Pollution, C/O Livingston Law Firm, 5701 Perrin Road, Fairview Heights, IL 62208, requesting OSMRE to investigate the Illinois State program as interpreted by the Illinois Supreme Court and determine whether the State of Illinois was implementing, administering, enforcing and maintaining its approved program regarding citizen suits in a manner consistent with the minimum Federal standards found in SMCRA.

On February 5, 2015, OSMRE staff spoke with Mr. John Hambrick, who submitted one of the three similar requests regarding the Oklahoma Department of Mines. Mr. Hambrick indicated that the estimated burden for his request was probably 30 to 40 hours. He indicated that this included researching the request process, putting the letter together with assistance from others, and going door-to-door seeking other concerned citizens to co-sign the petition (which included explaining the specifics to the citizen so that they could make an informed decision whether or not to co-sign).

On February 24, 2015, OSMRE received an electronic response from Mr. Josh Tatum, an attorney with Plews Shadley Racher & Braun LLP. Mr. Tatum indicated that his firm spent approximately 50 hours on Mr. Musgrave's case concerning Indiana. This included about 30 hours spent researching, strategizing, and drafting the letter he ultimately sent. Because it was the firm's first experience with a surface-mining case or OSMRE, they spent a significant amount of time figuring out the procedures, regulations, and options available to them.

Neither respondent had comments regarding possible issues with availability of data, frequency of collection, clarity of instructions and record keeping, disclosure, reporting format or on other data elements to be reported in putting together a request for evaluation.

On March 17, 2015, OSMRE published in the Federal Register (80 FR 13885) 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 awarded 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. The regulation does not provide for the confidentiality of information supplied by respondents.

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. No sensitive questions are 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.*

*\* 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

As noted in Item 8, OSMRE received four requests for evaluations of a State program during the past three years. Therefore, for the purpose of this supporting statement, we are assuming that one request will be filed each year for which we are requesting renewal of our information collection authority under this section.

The hourly burden varies greatly (20 hours to 100's of hours) depending on the scope and legal complexity of the request, the amount of background research and data collected, the number of co-signers (if any), and whether or not the respondent had gained procedural knowledge by having submitted a previous request. Although we consider it an anomaly, the 19-allegation count letter received from 18 organizations regarding the West Virginia program consisted of 102 pages and undoubtedly required hundreds of hours to prepare. We also note that of the four recent requests, one was submitted by citizens without the apparent aid of an attorney, one was from a citizen using the services of an attorney, one was from a non-profit organization using the services of an attorney, and the fourth was the large request from 18 organizations that possessed both technical and legal resources. OSMRE estimates that the average request will require approximately 60 hours to prepare.

b. Estimated Annual Wage Cost to Respondents

OSMRE estimates that one request will be received each year to evaluate a State program, and that the services of an attorney will be utilized to research the regulations and prepare the request letter. We expect that a paralegal with an hourly salary of \$17.66 (or \$24.72 with benefits) will require 48 hours, and an attorney with an hourly salary of \$46.93 (or \$65.70 with benefits) will require the remaining 12 hours preparing and submitting each request. Salaries are derived from the Bureau of Labor Statistics (BLS) website of wage rates for civic and social organizations ([http://www.bls.gov/oes/current/naics4\\_813400.htm#23-0000](http://www.bls.gov/oes/current/naics4_813400.htm#23-0000)). OSMRE assumes benefits at a rate of 1.4 of salaries based on the BLS news release USDL-14-2208, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—SEPTEMBER 2014, dated December 10, 2014 (<http://www.bls.gov/news.release/pdf/ecec.pdf>).

The cost to a respondent to prepare the request to evaluate a State program would be  $\$24.72 \times 48 \text{ hours} + \$65.70 \times 12 \text{ hours} = \$1,975$  (rounded).

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.

#### Total Annual Non-Wage Cost Burden to Respondents

##### a. Annualized Capital and Start-Up Costs

There are no capital or start-up costs associated with filing a request for evaluation of a State program.

##### b. Operation and Maintenance Costs

There are no operation or maintenance costs associated with filing a request for evaluation of a State program.

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.*

#### Estimate of Annualized Cost to the Federal Government

OSMRE will review the one request we expect to receive annually, conduct a review of the State program, and prepare and submit a response. We consider the 19-allegation count letter received from 18 organizations regarding the West Virginia program an anomaly that has taken OSMRE hundreds of hours (and counting) to respond to. OSMRE estimates that it will take an average of approximately 40 hours to conduct a typical review and respond. A program specialist with a GS 14 step 5 salary will review the request, evaluate the State program, and prepare the written response. At \$53.56 per hour ([http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/RUS\\_h.pdf](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/RUS_h.pdf)), or \$80.34 per hour when adding benefits at a rate of 1.5 of salary



as derived from the BLS news release USDL-14-2208, the annual cost to the Federal government is  $\$80.34 \times 40 \text{ hours} = \$3,214$  (rounded).

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

As discussed in Item 12.a., we receive approximately one request for a State program evaluation per year. OSMRE estimates, based on those identified in item 8, that each request requires approximately 60 hours to prepare.

Consequently, OSMRE requests an increase of 10 burden hours annually under Part 733 due to a re-estimate in respondent burden.

50 hours currently approved by OMB  
+ 10 hours due an adjustment  
60 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.*

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.*

OSMRE is not seeking a waiver from the requirement to display the expiration date for OMB approval, where appropriate.

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 certification statement.