

## **SUPPORTING STATEMENT A**

### **30 CFR Part 764 – State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations**

**OMB Control Number 1029-0030**

Terms of Clearance: None

#### Introduction

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is submitting this information collection clearance package to request OMB approval to continue collecting information under 30 CFR Part 764 of the OSMRE permanent regulatory program. This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87, which provides authority for citizens to petition states to designate lands unsuitable for surface coal mining operations, or to terminate such designation.

OMB reviewed and approved this information collection previously, and assigned it clearance number 1029-0030. OSMRE is seeking permission for state regulatory authorities to continue to collect this information.

#### ***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.*

Section 522(c) of SMCRA specifies that any person who is or may be adversely affected by mining operations shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. The petition must contain allegations of facts with supporting evidence that tend to establish the allegations.

Section 522(a) of the Act requires the regulatory authority to provide notice to the public

in a local newspaper of receipt of a petition to designate lands unsuitable and request relevant information from the public concerning the petition.

Section 522(c) of the Act requires the regulatory authority to hold a public hearing in the locality of the area covered by the petition and to issue a written decision. Section 522(d) requires that, prior to designating lands unsuitable, the regulatory authority prepare a detailed statement concerning the potential coal resources of the area, the demand for coal resources and the impact of any designation on the environment, the economy and the supply of coal.

Section 522(c) of the Act requires the regulatory authorities to issue and furnish, within 60 days after the hearing, to the petitioner and any other person at the hearing a written decision regarding the petition and the reasons for the approval or denial.

Section 522(a)(4)(B) requires the state to develop a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations.

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 764.13(b) requires the regulatory authority to determine what information petitioners must provide to have an area designated as unsuitable for surface coal mining operations and specifies the minimum amount of information the petitioner must provide.

Unsuitability Petition: The regulatory authority uses the following information to identify, locate, compare and evaluate the area requested to be designated as unsuitable for surface coal mining operations.

- (a) Petitioner's name, address, telephone number and notarized signature are needed to identify the person requesting the designation.
- (b) Identification of the petitioned area including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area is needed to locate and evaluate the land.
- (c) The interest of the petitioner that is or may be affected is needed to determine the right of the petitioner to petition under section 522.
- (d) A description of how mining in the area has affected or may adversely affect people, land, air or water, or other resources, including the petitioner's interest.

- (e) Allegations of facts and supporting evidence are needed to justify a designation of unsuitability under sections 522(a)(2) and (3).

Section 764.13(c) requires the regulatory authority to determine what information a petitioner must submit to terminate a designation of unsuitability, and specifies the minimum amount of information needed.

Petition to Terminate Unsuitability: The regulatory authority will use the following information to identify, locate, compare and evaluate the area for which a petition to terminate the designation of unsuitability has been filed.

- (a) Petitioner's name, address, telephone number and notarized signature are needed to identify the person requesting the termination.
- (b) Identification of the petitioned area including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area is needed to locate and evaluate the land.
- (c) The interest of the petitioner that is or may be affected if the designation of unsuitability is not terminated is needed to determine the right of the petitioner to petition under section 522.
- (d) Allegations of facts and supporting evidence which tend to establish that the designation should be terminated because the justification for the termination no longer exists. Supporting evidence is required as follows: (1) The nature or abundance of the protected resource or condition if the designation was based on criteria found in section 522(a)(3) concerning the substantial loss or reduction of such resource; (2) That reclamation is now technologically and economically feasible if the designation was based on the criteria found in section 522(a)(2); or (3) That resources or conditions will not be affected by surface coal mining operations, or in the case of land use plans, will not be incompatible with surface coal mining operations during and after mining if the designation was based on the criteria found in section 522(a)(3).

Section 764.15(a) of the regulations requires that within 30 days of receipt of a petition, the regulatory authority must conduct a completeness review and provide written notification to the petitioner of whether the petition is complete.

Section 764.15(b) requires that the regulatory authority post a newspaper advertisement in a local paper announcing receipt of the petition and requesting factual comments from the general public regarding the petition.

Section 764.15(d) requires that the regulatory authority maintain a record of the petition and all records received pertaining to the petition, for public inspection.

Section 764.17(a) - (d) of the regulations implement the requirements of section 522(c) to announce and hold hearings. Regulatory authorities are required to notify individuals of the public hearing by mail and newspaper advertisements prior to the date of the hearing.

Section 764.17(e) of the regulations implements the requirements of section 522(d) to prepare a detailed statement on the potential coal resources of the area and the impacts of any designation upon the economy, the environment and the supply of coal. This statement is used as part of the basis for the decision on the petition.

Section 764.19(b) implements the requirement in section 522(c) to issue a final written decision within 60 days of completion of the public hearing or if no public hearing is held, within 12 months after receipt of the complete petition. This decision of the regulatory authority will inform persons of the official action taken on the petition.

Sections 764.21(a), (b) and (c) of the regulations implement section 522(a)(4)(B) of SMCRA. These paragraphs require the regulatory authority to develop a database and inventory system and specify what information must be entered. Section 764.21(b) requires the regulatory authority to enter information relevant to the criteria specified in section 522(b) and (c) of the Act. Also, section 764.21(c) requires the regulatory authority to enter information on potential coal resources of the state, the environment, the economy, data that becomes available from petitions, and other data used in reaching decisions on unsuitability petitions.

The database and inventory system will be used by the regulatory authority to make a proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations and to aid in the evaluation of petitions filed under section 522(c) of SMCRA.

Section 764.25(b) requires the regulatory authority to maintain a map or a unified and cumulative record of areas designated as unsuitable for all or certain types of surface coal mining operations. This information will be used as a basis for making determinations on unsuitability petitions and for determining, when a permit application is filed, whether it includes any area designated as unsuitable for surface coal mining.

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 respondent who submits a petition to have lands designated unsuitable for surface coal mining operations, or to have such designation terminated, or the state regulatory authorities that process the requests. Limiting

respondents to electronic submissions would be contrary to SMCRA principles of public participation in the petition process. However, petitioners may submit petitions electronically at the states' discretion. No electronic submissions of petitions were received in the past three 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.*

No similar information is collected by OSMRE or by other Federal agencies. Also, circumstances vary with each respondent who files an unsuitability petition, or the state that processes the request. Therefore, there is no available information that can be used in lieu of that supplied on each respondent.

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

The information requested is the minimum necessary to determine the area and justification to designate areas as unsuitable for mining.

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.*

This information is collected only when a petition is filed. Therefore, frequency of collection does not apply here.

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 information collection is consistent with 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.*

Only one petition was filed to designate lands unsuitable for coal mining in the three most recent evaluation years for which we have data (EY 2013 through EY 2015). That petition was filed in 2012 with the Alabama Surface Mining Commission by the Blackwater Warrior Riverkeeper organization regarding the Blackwater Warrior River's Mulberry Fork. In August 2016, OSMRE consulted with a staff attorney with this organization on the preparation of a petition to designate lands unsuitable for coal mining, and one employee from a state regulatory authority who has experience in processing these petitions. The persons contacted were:

Director  
Alabama Surface Mining Commission  
Jasper, AL 35502

Staff attorney  
Black Warrior Riverkeeper  
Birmingham, AL 35222

These individuals provided burden estimates which are discussed in item 12 below. They did not express concerns with the availability of data, frequency of collection, clarity of

instructions, or data elements reported. The petitioner stated that the lands unsuitable process should be retained because it is an important tool for citizens in coal communities.

On July 6, 2016, OSMRE published in the Federal Register (81 FR 44043) 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.*

Payments or gifts are not provided to respondents.

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

OSMRE does not solicit confidential information.

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 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.

a. Estimate of Respondent Reporting Burden

In the previous information collection we expected to receive 4 petitions annually. OSMRE estimates, based on new information obtained from the Evaluation Year 2013 through 2015 annual oversight reports and discussions with individuals identified in item 8, that only 1 petition to designate lands unsuitable for mining will be submitted annually. We would expect approximately 50% (or one half) of the petitions to meet the criteria of completeness and be subject to hearings and the decision making process. The other 50% (or one half) of the submitted petitions are determined to be incomplete or frivolous and are returned. For this estimate, OSMRE assumes that the one petition to be received annually will progress through the entire process.

The petitioner noted they spent approximately 1,000 hours performing legal research about the petition process, talking to partner organizations about their lands unsuitable efforts, developing maps and other images, analyzing raw data, writing summaries, speaking with various agencies (Environmental Protection Agency, the state regulatory authority, and OSMRE), reviewing numerous scientific studies, talking with scientists, meeting with various drinking water stakeholders, compiling necessary documents, attending scheduled hearings, developing and participating in a media campaign to educate the public about the issue, working with source water protection experts, and writing and supporting the petition. They also appealed the denial of the petition.

Because previous hourly burden estimates to prepare a petition were significantly less than what we recently obtained, and the estimate provided by the respondent entails burdens beyond the scope of information collection under 30 CFR 764, we are assuming it will take an average of 600 hours to prepare a petition. The number of hours for the regulatory authority to process the petition has not significantly changed in the last three years.

Petitioner Burden

Section	Annual Responses	Current Hours per Response	Requested Hours per Response	Current ICB Hours	Requested ICB Hours	Change to ICB
764.13 - Prepare petition	1	250	600	1,000	600	-400



State Regulatory Authority Burden

30 CFR 764 Section	Annual Responses	Current Hours per Response	Requested Hours per Response	Current ICB Hours	Requested ICB Hours	Change to ICB
764.15 – Completeness review, newspaper ad, written notice to petitioner, create record	1	60	70	240	70	-170
764.17 – Announce hearing, prepare statement on coal resources and impacts	1	480	450	960	450	-510
764.19 – Research, prepare final written decision	1	1,200	1,200	2,400	1,200	-1,200
764.21, .25 – Update database, maintain records, maps	1	200	180	400	180	-220
Total			0	0	0	0

Therefore, the burden to respondents is 600 hours for petitioners and 1,900 hours for state regulatory authorities, or 2,500 hours for all respondents.

b. Estimated Wage Cost to Respondents

Petitioners: OSMRE estimates that the petition will be prepared by an attorney, with a base salary of \$63.46, derived from the Bureau of Labor Statistics (<http://www.bls.gov/oes/current/oes231011.htm>). Including benefits computed at a rate of 1.4 of salary derived from the U.S. Bureau of Labor Statistics news release USDL-16-1150 entitled EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—MARCH 2016, published June 9, 2016 (<http://www.bls.gov/news.release/pdf/ecec.pdf>), the salary and benefits for an attorney is \$88.84 per hour.

At \$88.84 per hour, the cost to a respondent to prepare the petition would be \$88.84 x 600 hours = \$53,304. The cost to all petitioners is \$53,304.

State regulatory authorities: OSMRE estimates that a physical scientist and a manager

with the State regulatory authority will review the petition, prepare the documentation and update the database. OSMRE has derived wage costs from the Bureau of Labor Statistics [http://www.bls.gov/oes/current/naics4\\_999200.htm](http://www.bls.gov/oes/current/naics4_999200.htm). Benefits were computed at 1.6 of salary as indicated from the U.S. Bureau of Labor Statistics news release indicated above.

State Regulatory Authority Wage Cost

Position	Total Hour Burden	Cost Per Hour (\$)	Cost Per Hour (\$) w/ 1.6 benefits	Total Wage Burden (\$) (rounded)
Physical Scientist	1,710	36.98	59.17	101,181
Operations Manager	190	43.12	68.99	13,108
Total	1,900			0

Therefore, the cost burden to respondents is \$53,306 for petitioners and \$114,289 for State regulatory authorities, or \$167,595 for all respondents.

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.*

OSMRE estimates that the state regulatory authorities would spend \$120 per newspaper advertisement announcing receipt of a petition to designate lands unsuitable and request relevant information from the public concerning the petition. Therefore, the cost would be \$120 x 1 newspaper ad = \$120.

b. Operation and Maintenance Costs

There are no distinct operations or maintenance costs associated with the information collection requirements for 30 CFR 764.

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 Federal government will not incur any cost for this part of the regulation. OSMRE has no direct oversight responsibility for the designation of lands unsuitable under this part. During the annual review of the State Regulatory Program, OSMRE staff may review the process used by the state to evaluate the petitions, but not the petitions themselves.

The cost to the Federal government to process unsuitability petitions under SMCRA in Federal program states or on Federal lands is discussed under 30 CFR Part 769.

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

The previously approved burden estimate for 30 CFR Part 764 is 5,000 hours. This information collection request reduces the burden estimate to 2,500 hours. This 2,500 hour decrease is due primarily to the fewer number of petitions expected to be received. This burden is offset by an increase in estimated burden per respondent to prepare the petition, and modest adjustments in the estimated regulatory authority processing time. The burden will change as follows:

5,000 hours currently approved
- 2,500 hours due to an adjustment
2,500 hours requested

The non-burden cost for this part has decreased to \$120 for newspaper advertisement costs due primarily to the fewer number of petitions expected to be received.

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 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 collection expiration date.

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.