

SUPPORTING STATEMENT A

30 CFR Part 769 – Petition Process for Designation of Federal Lands as Unsuitable for All or Certain Types of Surface Coal Mining Operations and for Termination of Previous Designations

OMB Control Number 1029-0098

Terms of Clearance: None

Introduction

This information collection clearance package is being submitted by the Office of Surface Mining Reclamation and Enforcement (OSMRE) to request permission to continue to collect information under 30 CFR Part 769 of the OSMRE permanent regulatory program. The regulations govern information regarding designation of Federal lands as unsuitable for certain types of surface coal mining operations. The information is needed to meet the requirements of the Surface Mining Control and Reclamation Act (SMCRA or the Act). The information collection for 30 CFR Part 769 was previously approved by the Office of Management and Budget (OMB) and assigned control number 1029-0098.

Sections 769.13 and 769.15 contain information collection requirements. However, section 769.15, authorizing individual interventions into the process, is non-standardized and is, therefore, not considered an information collection activity. This section was previously removed from consideration in this collection.

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.

Section 769.13 – Contents of Petitions

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 769.13(a) requires the regulatory authority to determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

Section 769.13(b) requires the regulatory authority to determine the information required to terminate designations of lands unsuitable for surface mining.

These two requirements implement the provisions of section 522(c) of the 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.*

Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. At a minimum, the regulatory authority requires the following information:

- (a) Petitioner's name, address, and telephone number are needed to identify individual, company, etc., requesting the designation or termination.
- (b) Identification of the area is required to determine the location of the area, its size and relationship to the section 522 areas.
- (c) Petitioner's interest is needed to determine the status of petitioners for the validity of acceptance of the petition.
- (d) Description of how mining of the area has affected, or how mining may affect people or the environment is needed to justify the unsuitability petition.
- (e) Allegations of facts and supporting evidence are needed to comply with requirements of section 522(a) and (b).

To terminate designations of lands as unsuitable for surface mining operations the

regulatory authority must be provided additional information as follows:

(a) Where the unsuitability determination was based on State or local land use plans, fragile or historic lands, loss of land productivity, or lands subject to natural hazards:

1. Discuss the nature or abundance of the protected resource affected.
2. Discuss the resources or conditions not being affected by mining operations in the surrounding area to ensure adequate protection of resources.

(b) Where the unsuitability petition was based on a finding that reclamation was not technologically or economically feasible, a demonstration that reclamation is now technologically and economically feasible. This is needed to determine the level of resources and the basis for termination of a designation.

The regulatory authority will use this information to identify, locate, compare and contrast the area, resources and conditions for the purpose of complying with section 522.

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.*

Use of automated methods to collect the information required for 30 CFR Part 769 generally is not practical because collections are not repetitive, they do not involve use of a standard form, and the required information does not consist of numerical data or responses to multiple-choice questions. Persons may submit responses electronically at their 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 in 30 CFR Part 769 is unique to each person or site. Since it is collected infrequently (generally only at the time that a person requests the designation of lands to be unsuitable for surface coal mining operations on Federal lands), duplication is minimal to nonexistent. OSMRE is not aware of any other Federal agency that collects this information. OSMRE is the only Federal agency charged with implementation of section 522(c) of SMCRA.

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

There are no special provisions for small businesses or other small entities. Special provisions are not appropriate because the requested information is the minimum needed to petition the regulatory authority to designate Federal lands unsuitable for surface coal mining operations, or to terminate such designation.

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.*

Failure to collect the information requested in 30 CFR Part 769 would impair the ability of OSMRE and state regulatory authorities to ensure that surface coal mining operations in the areas listed in section 522(c) of the Act are conducted only under the circumstances set forth in the Act.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
- * requiring respondents to report information to the agency more often than quarterly;*
 - * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - * requiring respondents to submit more than an original and two copies of any document;*
 - * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*
 - * in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
 - * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
 - * requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

No collection of information in 30 CFR Part 769 is inconsistent with the guidelines at 5 CFR 1320.5(d)(2) as summarized in the instructions for this item of the supporting statement.

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.

Section 522 of SMCRA establishes a process through which mining may be limited or prohibited where other values are found to be more important than mining and specifies certain areas as unsuitable for mining. Part 769 provides for the petition process for designation of lands as unsuitable for all or certain types of surface coal mining operations and for terminating such designations. Section 769.13 describes information required for designation of a petition and for the termination of a petition.

OSMRE Regional Offices stated that no petitions to designate Federal lands unsuitable for surface coal mining operations have been received in the previous three years (Evaluation Years 2018-2021).

Contact information:

Office of Surface Mining Reclamation and Enforcement
Knoxville Field Office, Technical Group
Knoxville, TN 37902

Previously, OSMRE estimated that 3,000 hours were required to prepare a petition over a three-year period. The respondent raised no concerns with the requirements for completing a petition.

On May 28, 2021, OSMRE published in the Federal Register (86 FR 28888) a notice requesting comments from the public regarding the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden on respondents. This notice gave the public 60 days in which to comment. However, no comments were received.

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

OSMRE provides no payments or gifts to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the*

assurance in statute, regulation, or agency policy.

No confidential information is solicited.

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.*

There are no questions of a sensitive nature.

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. Burden Hour Estimates for Respondents:

Based on the available information obtained from the respondent identified in item 8 above, we estimate that preparing the required documentation for filing a complete unsuitability petition of the type most recently submitted to designate Federal lands as unsuitable for surface coal mining, can require 3,000 or more hours. Assuming that OSMRE will receive one petition every 3 years, OSMRE anticipates that most petitions will take an average of $3,000 \text{ hours} / 3 \text{ years} = 1,000 \text{ hours/per year}$ to complete.

b. Estimated Annual Wage Costs to Respondents

OSMRE estimates that the request will be prepared by a private sector attorney. The hourly estimated wage for an attorney is \$73.86 per hour based the Bureau of Labor Statistics (https://www.bls.gov/oes/current/naics4_541100.htm). We adopt a benefit factor of 1.4 for Federal benefits based on BLS news release USDL-21-1094, dated June

17, 2021, Employer Costs for Employee Compensation – March 2021 (<http://www.bls.gov/news.release/pdf/ecec.pdf>). We estimate the hourly rate at \$103.40/hour (\$73.86/hour x 1.4). Therefore, wage cost to the respondent to prepare the request amounts to **\$103,400** (\$103.40 / hour x 1,000 hours).

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.*

a. Annualized Capital and Start-Up Costs

There are no annual capital or start-up costs associated with this collection of information.

b. Operation and Maintenance Costs

There are no significant or distinct non-wage operations or maintenance costs associated with compliance with the information collection requirements of 30 CFR 769.13.

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.*

We estimate it would require 13,500 hours for OSMRE to review a petition over a three-year period, or 4,500 hours per year per petition. We estimate that it will require an average of \$59.13/hour (GS 14/5 regulatory program specialist) to review based on the Federal employee pay tables from the Office of Personnel Management's website at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/RUS_h.pdf. We adopt a benefit factor of 1.6 for Federal benefits based on BLS news release USDL-21-1094, dated June 17, 2021, Employer Costs for Employee Compensation – March 2021 (<http://www.bls.gov/news.release/pdf/ecec.pdf>).

With benefits the hourly rate is \$94.61/hour (\$59.13/hour x 1.6). The petition, the cost to the Federal government is estimated to be **\$425,745** (4,500 hours x \$94.61).

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

This request does not change the currently approved burden of 1,000 hours.

16. *For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

OSMRE has no plans to publish the information collected.

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 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."*

There are no exceptions to the certification statement.