

## **Supporting Statement A**

### **30 CFR Part 740: General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands**

**OMB Control Number 1029-0027**

**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 the collection of information associated with 30 CFR Part 740 of the OSMRE permanent regulatory program. The regulations govern the issuance of permit applications to conduct surface coal mining and reclamation operations of Federal lands and to applications for revision or renewals of permits. The information collection requirements contained in 30 CFR Part 740 are needed to meet the requirements of the Surface Mining Control and Reclamation Act of 1977.

#### **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 523 (a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), mandates that a Federal lands program be established to govern surface coal mining and reclamation operations on all Federal lands, including leased Federal coal, and that such a

program incorporate all of the requirements of SMCRA. Section 506 of SMCRA requires that surface coal mining and reclamation operations be conducted in accordance with a permit issued by the regulatory authority. Section 740.13 requires information to be submitted to determine the eligibility of the applicant to conduct operations on Federal lands.

Section 715 of SMCRA requires that where the coal proposed to be mined by surface coal mining operations is owned by the Federal government and the surface is subject to a lease or a permit issued by the Federal government, the application for a permit shall include either written consent of the permittee or lessee of the surface land involved or the submission of a Federal lessee protection bond. These requirements are implemented in 30 CFR 740.15(c) of the regulations.

Section 523(a) of SMCRA requires that the Secretary of the Interior establish a Federal lands program applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands. Section 519(a) of SMCRA requires the permittee to file a request for release of all or part of the performance bond. In addition to the bonding requirements under SMCRA, the Mineral Leasing Act (MLA) requires a bond on the Federal coal lease. Accordingly, OSMRE has promulgated regulations at 30 CFR 740.19(b) to coordinate the related requirements of SMCRA and the MLA concerning the completion of operations, the release of the performance bond pursuant to SMCRA and the release of the Federal lease bond pursuant to the MLA. This information is required by the regulatory authority to determine when the surface coal mining and reclamation operation has been completed.

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 requirements of 30 CFR 740.13 relate to the issuance of a permit application to conduct surface coal mining and reclamation operations on Federal lands and to an application for revision or renewal of a permit. The information reporting requirements addressed in this supporting statement are those that specifically relate to approval for an operator to mine on Federal land under a permit granted by the regulatory authority. The other more general information collection requirements pertaining to permit application submissions and providing a performance bond and proof of insurability have already been addressed in relevant sections of the 30 CFR Subchapter VII regulations and therefore, will not be addressed here.

An application to conduct surface coal mining and reclamation operations on Federal lands or to mine Federal coal requires, in addition to the permit, the involvement of OSMRE and other Federal agencies to comply with a number of Federal laws. Such involvement initiates the information collection reporting requirements specific to 30 CFR 740.13(b) and the notification and consultation requirements in (c), (d), (e), and (f).

The Federal laws necessitating additional information, coordination and consultation include the National Environmental Policy Act of 1969 (NEPA) and the implementing CEQ regulations at 40 CFR 1500-1508, the National Historic Preservation Act (NHPA), the Endangered Species Act, and the Mineral Leasing Act. Each of these acts (and their implementing regulations) imposes certain responsibilities on a Federal agency before any major action is taken or permitted. For example, section 102(2)(c) of NEPA requires the responsible Federal agency to consider the impacts to the human environment before taking any major action such as issuing a permit or approving mining on Federal land. As part of that consideration, OSMRE must analyze information on the area affected locally, regionally, or nationally; the physical and social resources affected, such as air quality, water quality, employment, aesthetics, and fish and wildlife resources. OSMRE must also ensure that surface coal mining operations are conducted so as to protect the environment and assure adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with surface coal mining operations. If applicants fail to satisfy the application requirements, the regulatory authority would be unable to issue a valid permit or approval to mine coal on Federal land.

Section 740.13(b)(3) requires each permit application package to include the following information in addition to that required for a permit under the applicable regulatory program. This information is needed to determine the applicant's compliance with all of the provisions of SMCRA and other applicable Federal laws.

- (1) The resource recovery and protection plan, which is needed to determine the applicant's compliance with the provisions of the Mineral Leasing Act as it applies to the development, production and conservation of leased Federal coal.
- (2) A description of the affected area of the proposed surface coal mining and reclamation operation is needed to determine whether there will be increases in employment, population and revenues to public and private entities and to determine their ability to provide goods and services necessary for surface coal mining and reclamation operations.
- (3) An evaluation of impacts to scenic and aesthetic resources, including noise on the surrounding area in terms of all resource areas affected by the permitted mining operation.
- (4) A statement, including maps and ownership data as appropriate, of any cultural or historical sites listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation.
- (5) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment in accordance with 36 CFR Part 800, of properties significant and listed or eligible for listing on the National Register of Historic Places within the disturbed area of the proposed surface coal mining and reclamation operation.
- (6) A description of the probable changes in air quality resulting from the mining operation and any necessary measures to comply with prevention of significant deterioration limitations, State Implementation Plans, or other Federal or State laws for air quality protection.

(7) A description of the location, acreage and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation.

(8) A description of active and inactive nests and prey area of any Bald or Golden Eagle located within the affected area of the proposed surface coal mining and reclamation operations.

(9) A description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations.

Section 740.13(c) includes requirements for the regulatory authority to transmit a copy of the permit application package (PAP) to the Federal Land Management Agency (FLMA) with a request for review and comment, for the regulatory authority to consider the comments of the FLMA and include them in the record of the permit decision, and where required, evidence of the execution of a Federal lessee protection bond.

Section 740.13(d) includes requirements for the regulatory authority to inform OSMRE of requests for permit revisions involving leased Federal coal.

Section 740.13(e) includes a requirement for the regulatory authority, before approving or disapproving an application for transfer, assignment or sale of rights granted under a permit issued under the Federal lands program, shall consult with the appropriate FLMA and the Bureau of Land Management (BLM), as applicable.

Section 740.13(f) includes a requirement for the regulatory authority to notify BLM if a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked. This is necessary in order for BLM to determine whether action should be taken to cancel the Federal lease.

Section 740.15 complies with the specific provisions of SMCRA requiring either written consent of the surface lessee or the submission of a Federal lessee protection bond. The Federal government will use the written consent or bond to insure that the rights and interest of the surface lessee have been considered or are protected. OSMRE does not anticipate that a Federal lessee protection bond will be secured for the permit area within the next three years since the factual situation requiring the submission is rare (Federal surface leased for purposes other than surface coal mining overlying leased Federal coal to be mined where the lease is transferable). Therefore, no respondents were consulted concerning this information collection burden.

Section 740.19(b)(2)(i) requires the person conducting surface coal mining and reclamation operations, where there is a Federal lease bond, to submit to OSMRE a written notice of intent to cease or abandon those operations, including a statement of the number of acres affected by the operations, the extent and kind of reclamation accomplished, and the structures and other facilities that are to be removed from or remain on the permit area. Once the notice is received, the Bureau of Land Management and any other Federal land management agency shall promptly

conduct a joint inspection to determine whether all operations have been completed in accordance with regulations, the lease or license, and the mining plan. If unable to collect this information, the regulatory authority would not be able to determine if all requirements have been complied with, nor whether the liability under the lease bond has been fulfilled. As stated above, this rarely occurs.

This information will be used by OSMRE to ensure compliance with the SMCRA requirement that mining on Federal land is in compliance with all Federal laws and regulations other than SMCRA.

- 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 continues to actively support State Regulatory Authority's (SRA's) implementation of electronic submissions of permit applications and other reports normally prepared and submitted on paper. OSMRE currently estimates that 75% of applications are received electronically, with some SRA's in the early stages of electronic exchange, while others receive 100% of permit applications on CD's, DVD's or using web-based systems. Currently, with much litigation requiring permits electronically, more and more permits are being submitted electronically.

- 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.*

OSMRE is the only Federal agency responsible for processing applications for surface coal mining permits on Federal lands. There is no similar information available that can be used to satisfy the law.

- 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.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The information is collected once for each application and when a permit is revised or renewed. Therefore, collection is conducted approximately once every five years, or when initiated by the respondent. If the information were conducted less frequently then no permit would be issued and the program would not function effectively.

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.*

None of these special conditions apply except for the number of copies submitted by the permit applicant. All major coal-producing states that contain Federal lands have cooperative agreements with OSMRE. In those states the state regulatory authorities receive, review and approve permit applications for Federal lands. Each state-federal cooperative agreement authorizes the SRA to receive an “appropriate number of copies” at the states discretion. The states usually require three copies. OSMRE does not have authority to limit the number of copies submitted to states.

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.*

This regulation was promulgated on February 16, 1983, (48 CFR 6912) after an opportunity for public comment. No comments were received concerning the information collection requirements contained in the rule.

OSMRE contacted a mining company official and two regulatory authorities with experience in the preparation or processing of the Federal lands portion of the permit application package regulations (see contact list below).

Montana Department of Environmental Quality  
Coal and Opencut Mining Bureau  
1216 East 6th Avenue  
Helena, Montana  
59620-0901

North Dakota Public Service Commission  
Reclamation & AML Division  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

New River Engineering, INC  
School Drive  
Belle, West Virginia 25015

The state regulatory authorities provided burden estimates and verified which we have included in this information collection request. None of the respondents expressed concerns regarding reporting requirements of the subject regulations.

On July 19, 2021, OSMRE published in the Federal Register (86 FR 38123) 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.*

No payments or gifts were made 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 questions are asked in this collection activity.

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.*

Sensitive questions are not asked.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*
  - \* *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
  - \* *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.*
  - \* *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

The table below summarizes the burden hours for industry applicants and for the State regulatory authorities with corresponding changes from current burden hour estimates. Revised number of responses for industry applicants and state regulators are based on the number of new surface mining permit applications and permit revisions that add acreage to an existing surface mining permit area.

We anticipate 4 new applications annually, a decline from 5 from the previous renewal. It is expected that State regulatory authorities would have jurisdiction for 99 of the 100 new applications, with one application received where OSMRE is the regulatory authority.

#### **Summary of Burden Hours**

Section 740	Responses	Hours Per Response	Total Hours Requested	Current	Difference
740.13(b)	4	244	976	1,220	-244
740.13(c)-(f)	4	285	1,140	1,425	-285
740.15	1	1	1	1	0
740.19	1	4	4	4	0
Total	10		2,121	2,650	-529

b. Estimated Annual Wage Cost to Respondents

OSMRE uses the U.S. Department of Labor’s Bureau of Labor Statistics (BLS) figures for calculating cost burden for mining engineers. These figures are derived for mining companies found at [http://www.bls.gov/oes/current/naics4\\_212100.htm](http://www.bls.gov/oes/current/naics4_212100.htm) and for state government engineers found at [http://www.bls.gov/oes/current/naics4\\_999200.htm#b17-0000](http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000). We have also included benefits calculated at a rate of 1.4 of wages for the coal companies, and a benefits factor of 1.6 for State government employees. These benefit estimates were developed in accordance with the U.S. Bureau of Labor Statistics news release USDL-21-1647 for Employer Costs for Employee Compensation – June 2021, dated June 21, 2021, found at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

Industry wages for mining engineers are \$61.22/hour (\$43.73 x 1.4). In addition, the estimated total annual wage cost for State regulatory authorities to review §740.13 of each permit application is approximately \$98.02 per hour (\$61.26 x 1.6) for a state government engineer. State wage cost is \$111,743(\$98.02 x 1,140 hours). Therefore, the total cost to all respondents is \$171,800.

**Summary of Wage Cost**

Section	Total Hours Requested	Cost per Hour (\$)	Total Wage Burden (\$)
740.13(b)	976	61.22	59,750.72
740.13(c)-(f)	1,140	98.02	111,742.80
740.15	1	61.22	61.22
740.19	4	61.22	244.88
All	2,121	81.00	171,800

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 capital or start-up costs, or operational cost associated with the collection of information for this specific part.

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.

OSMRE has calculated Federal employee costs using 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](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/RUS_h.pdf). A benefits factor of 1.6 of wages has been calculated per USDL-21-1647.

OSMRE will review all permit application packages submitted for mining leased Federal coal to ensure compliance with the Federal lands program requirements of SMCRA and the Mineral Leasing Act. It will take an OSMRE regulatory program specialist/engineer at a GS-13, step 1 to prepare and process the mine plan decision documents associated with part 740. At \$70.61 per hour (\$44.13 x 1.6), the estimated annual cost to the Federal government is therefore is \$56,576 (\$70.61 x 801 hours).

**Federal Wage Cost**

Section	Number of Responses	Hours Per Response	Total Hours	Cost per Hour (\$)	Total Wage Burden (\$)
740.13(b)	4	200	800	70.61	56,488
740.15	1	0.25	0.25	70.61	18
740.19	1	1	1	70.61	71
All	6		801		56,576

Note: 740.13(c)-(f) is not included in Federal cost since it falls entirely under the State’s responsibility.

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

The previously approved information collection burden for 30 CFR 740 included 2,650 burden hours. We are now requesting 2,121 burden hours as a result of a reduction applications on Federal lands.

This information collection request results in an adjustment as follows:

$$\begin{array}{r}
 2,650 \text{ hours currently approved} \\
 - \quad 529 \text{ hours due to an adjustment} \\
 \hline
 2,121 \text{ hours requested}
 \end{array}$$

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.

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.*

This information collection requirement is found in 30 CFR part 740. The OMB control number is listed in 30 CFR 740.10.

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

There are no exceptions identified in “Certification for Paperwork Reduction Act Submissions.”