

Supporting Statement A
30 CFR Part 702 - Exemption for Coal Extraction Incidental to the Extraction
of Other Minerals

OMB Control Number 1029-0089

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 collecting information for 30 CFR Part 702 of the OSMRE permanent regulatory program. The information collection for 30 CFR Part 702 was previously approved by OMB and was assigned control number 1029-0089.

Sections 702.11, 702.12, 702.13, 702.15, and 702.18 contain information collection requirements.

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.*

This Part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 USC 1201 et seq., which grants an exemption from the requirements of SMCRA to operators extracting not more than 16 2/3 percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the State regulatory authorities (SRA's) to make that determination.

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 702.11 requires that operators who believe their mines may qualify for an incidental mining exemption file an application for exemption with the appropriate regulatory authority in order to obtain that benefit.

Section 702.12 describes the information that must be provided in an application for exemption including operator names and addresses, a list of the minerals to be extracted, estimates of production and revenue, the projected fair market values of the coal and other minerals mined. The applicant must include a description and maps of the location of the mining area and a general description of mining and mineral processing activities. Public participation for this regulation is provided for in section 702.12(i). That section requires a newspaper notice be published in the county of the mining area announcing the filing an administratively complete application for exemption with the regulatory authority.

Section 702.13(a) requires that ". . . all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption." Paragraphs 702.13(b) and (c) of section 702.13 provide protection from public disclosure for confidential information held by the regulatory authorities. Therefore, section 702.13(a) requires the SRA's to make all non-confidential information acquired pursuant to sections 702.11, 702.12 and 702.18 available for public inspection and copying.

Section 702.15(a) requires operators of mining areas exempt pursuant to section 701(28) of SMCRA to maintain "information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the regulatory authority." Paragraph 702.15(b) requires operators of mining areas exempt pursuant to section 701(28) of SMCRA to notify the SRA upon completion of mining or permanent cessation of all coal extraction activities.

Section 702.18 requires the annual reporting of the information needed by the SRA to determine continued eligibility for an incidental mining operation exemption from SMCRA. Each annual report submitted in support of the continuation of an existing exemption must contain the information specified in section 702.18.

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.*

Requested information is received infrequently by States, usually only a few nationally. Regulatory authorities have indicated that their focus is on electronic receipt of full permit applications and not these exemption applications. Since State regulatory authorities are responsible for the receipt and approval of these applications and not OSMRE, we have no authority over the method of submission of these applications.

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.*

This is a unique information collection, there is no duplication. No similar information is collected pertaining to exempt operations by OSMRE, or any other Federal agency.

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

Some of the operators filing applications are small businesses. Information required is limited to the minimum detail necessary to verify that exemptions were valid or to determine whether the mining area operation is exempt.

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 application is a one-time information collection, and the annual reports are submitted yearly. Less frequent submissions could prevent SRA's from determining whether the exemptions were being fraudulently maintained.

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

are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

** requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

Guidelines in 5 CFR 1320.5(d)(2) are not exceeded.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

OSMRE staff contacted those states primarily receiving the most exemption applications for coal removal from other mineral extractions as listed below:

Division of Natural Resources
Kentucky Division of Mine Permits
#2 Hudson Hollow Rd
Frankfort, KY 40601

Bureau of Mine Reclamation
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17106-9205

Industrial Minerals Inspection
Ohio Division of Natural Resources
Division of Mineral Resources
Salem, OH 44460

We also contacted the following OSMRE field office for burden estimates for State oversight for the Federal Program on lands where OSMRE serves as the regulatory authority.

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

The above respondents did not identify any concerns regarding the availability of data, frequency of collection, clarity of instructions and record keeping of the information collection requirements. These individuals did provide the burden estimates identified in item 12 for each section.

On September 30, 2021, OSMRE published in the Federal Register (86 FR 54237) 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 are made to respondents.

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

Pursuant to section 702.13(b) and (c), the SRA will keep the information confidential if, at the time of submission, (1) the operator requests in writing that it be kept confidential, and (2) the information concerns trade secrets, or (3) the information is privileged commercial or financial information of the operator. The information may be available to the public after notice and a hearing is afforded persons both seeking and opposing disclosure of the information. All information submitted without requesting confidentiality will be made available to the public.

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.*

Reporting and Reviewing burden.

a. Estimate of Respondent Reporting Burden

The following table summarizes the number of responses, the number of hours per respondent, the total hours, and the changes to the OMB-approved burden estimates. Although existing permits for exemptions have declined (from 80 to 75) nationwide, annual application received are expected to increase (3 to 4) as a result of the recent Bipartisan Infrastructure Law (BIL) expanding opportunities for other minerals such as sand and gravel for road projects in the same areas producing coal.

SUMMARY OF BURDEN FOR 30 CFR PART 702

Section	Industry Responses	State Regulatory Authority(SRA) Responses	Total Responses	Hours per Industry Response	Hours per SRA Response	Total Hours Requested	Current Hours	Difference in hours
702.11 / .12	4	4	8	28	30	232	174	58
702.13	0	40	40	0	1	40	40	0
702.15	4	4	8	1	2	12	9	3
702.18	75	75	150	4	2	450	480	-30
Total	83	123	206			734	703	31

b. Estimate of wage cost to respondents:

OSMRE estimated wage costs for industry and State Regulatory Authorities (SRAs) using the Bureau of Labor Statistics (BLS) occupational categories: http://www.bls.gov/oes/current/naics4_212100.htm for industry wages, and http://www.bls.gov/oes/current/naics4_999200.htm for State employees. A mining engineer is used as the representative occupational category for the annual wage cost for industry and state employee wage.

Wage cost compensation for industry is \$61.22/hour (\$43.73 x 1.4) and compensation for state employee is \$98.02 (\$61.26 x 1.6) using benefit ratios in accordance to BLS news release USDL-21-2146, Employer Costs for Employee Compensation – September 2021, dated December 16, 2021 <http://www.bls.gov/news.release/pdf/ecec.pdf>. State respondents will cost \$98.02 per hour (\$61.26 x 1.6).

Section	Industry Hours	SRA Hours	Industry \$ Wage Cost @ \$61.22/hour	SRA \$ Wage Cost @ \$98.02	Total \$ Wage Cost
702.11 / .12	112	120	6,857	11,762	18,619
702.13	0	40		3,921	3,921
702.15	4	8	245	784	1,029

702.18	300	150	18,366	14,703	33,069
Total	416	318	25,468	31,170	56,638

Therefore, we estimate that the burden to all respondents is \$25,467.52 for industry + \$31,170.36 for State regulatory authorities = \$56,638.

13. *Provide an estimate of the total annual non-hour cost burden to respondents or record-keepers 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.*

Each permit applicant is required to publish a newspaper announcement notifying the public of the applications, and request public comment. At \$200 per announcement, total capital and start-up costs for 4 responses (applications) is \$800.

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 a wage rate for an OSMRE Reclamation Specialist/Engineer who would complete the oversight reviews and conduct the Federal program activities. OSMRE staff members tasked with these responsibilities typically are at a GS 13, step 5 level. using Federal hourly cost from: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/RUS_h.pdf . Federal wage cost is estimated at \$82 per hour (\$51.25 per hour x 1.6), plus including benefits.

Section 702.11 & 12 –

Oversight: The OSMRE does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 702.11 and 702.12 in the absence of any indication of problems. OSMRE assumes that we will conduct an oversight review of this topic in one State program per year and that the review requires an average of 8 hours. At \$82 per hour, the annual cost to the Federal government for this oversight activity is estimated to be \$656 (\$820 x 8 hours).

Section 702.13 –

Oversight: OSMRE does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 702.13(a) in the absence of any indication of problems. OSMRE assumes that we will conduct an oversight review of this topic in one State program per year and that the review requires approximately 1 hour at \$82 per hour. Therefore, annual cost to the Federal government for this oversight activity is estimated to be \$82.

Section 702.15 -

Oversight: OSMRE does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 702.15 in the absence of any indication of problems. OSMRE assumes that we will conduct an oversight review of this topic in one State program per year and that the review requires approximately 1 hour at \$82 per hour. Therefore, annual cost to the Federal government for this oversight activity is estimated to be \$82.

Section 702.18 –

Oversight: It will take an average of 1 hour to review each exemption report. OSMRE's oversight role is to review 4 randomly chosen reports submitted annually to SRA's. This is done to assure OSMRE that the State is fully complying with the Act and the approved regulatory program. At \$82 per hour including benefits for the regulatory program

specialist to review each report it will cost the Federal government \$328 (4 reports x 1 hour per report x \$82 per hour).

Therefore, we estimate that the burden to the Federal government to comply with all information collection sections of Part 702 is \$1,148.

FEDERAL WAGE COST BURDEN SUMMARY FOR 30 CFR PART 702		
Section	Hours Required	Federal Wage Cost @ \$82/hour
702.11/12	8	656
702.13	1	82
702.15	1	82
702.18	4	328
TOTAL	14	1,148

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

This information collection request will result in an increase of 31 burden hours, due to an expected application for non-coal projects related to infrastructure in states and localities with coal deposits.

Therefore, this request adjusts the burden hours as follows:

703 Hours currently approved by OMB
 + 31 Hours due to an adjustment
 734 Hours requested

This request increased the non-wage cost burden of by \$200 (\$800 for publication expenses) from new applications.

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.*

OSMRE displays its OMB control number at 30 CFR 702.10.

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, "*Certification for Paperwork Reduction Act Submissions.*"