

## Supporting Statement for Information Collected for Federal Coal Lease Review

### A. Justification

1. The Federal Coal Leasing Amendments Act of 1976 (“FCLAA”) provides that no federal “coal lease may be issued, renewed, or readjusted ... until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary as to whether such lease would create or maintain a situation inconsistent with the antitrust laws.” 30 U.S.C. § 184(1)(2)(1976). Regulations promulgated by the Department of Interior (“Interior”) provide that “[s]ubsequent to a lease sale, but prior to issuing a lease, [Interior] shall require the successful bidder to submit on a form or in a format approved by the Attorney General information relating to the bidder’s coal holdings ... for transmittal to the Attorney General.” 43 C.F.R. § 3422.3-4. Similar regulations apply to lease exchanges, readjustments, and transfers. 43 C.F.R. §§ 3435.3-7, 3451.2 and 3453.2-2. After careful consideration, the Department of Justice (“Department”) has determined that it requires the attached forms to be completed by prospective lessees of federal coal leases in order to carry out its responsibilities under the FCLAA.
2. The information collected on the attached forms will be and has been used by the Antitrust Division of the Department in reviewing individual federal coal leases under FCLAA. Information about a prospective lessee’s coal holdings is critical to an analysis of the competitive effects of a lease issuance.
3. The collection involves the potential coal lessee providing coal holdings information on a form accessed on the website of the Antitrust Division of the Department. The Department has modified the form so that the potential lessee can now complete the form electronically or manually. Once completed, the potential lessee prints and then submits the form to the Interior’s Bureau of Land Management (“BLM”) office administering the coal lease transaction. Per existing regulations, the BLM office transmits the collected coal holding information to the Antitrust Division when the BLM determines it is time to seek the Department’s advice on the lease transaction at issue. The BLM typically forwards about 20 responses per year to the Antitrust Division for review. As the BLM determines when during the lease process it will seek the Department’s advice on a particular transaction, the Department does not think it practicable to have the collected information submitted by the potential coal lessee directly to the Department, electronically or otherwise. The forms themselves seek limited, discrete types of information, *e.g.*, the amount of coal reserves the prospective lessee holds in specific geographic

regions of the United States. The Antitrust Division generally requires 30 minutes to review the information provided in the forms. Given the discrete amount of information sought by the forms, the limited number of submissions per year, and the ease of extracting from the forms the information necessary for its antitrust review, the Department does not believe receiving the collected information directly from potential lessees electronically would enhance the Department's review of the collected information or reduce the burden on the person completing the form.

4. The Department of Energy and Interior have advised the Department that, to the best of their knowledge, information similar to that requested by these forms – current, detailed, and company-specific information regarding an individual coal company's coal reserves – does not exist elsewhere in the federal government.
5. For the most part, the coal companies that constitute the prospective federal coal lessees that will be completing these forms are not small businesses. However, to the extent that some of the coal companies seeking to obtain federal coal leases are small businesses, it should not be a hardship for those companies to provide information regarding the amount and location of their coal holdings in the manner requested by these forms.
6. These forms are the only practicable method of collecting information regarding a prospective federal coal lessee's coal holdings. If the Department did not have access to the coal reserve information requested by these forms, the Department would not be able to perform its responsibilities under the FCLAA.
7. The only circumstance in which a prospective federal coal lessee would have to report the information sought by these forms more than once per quarter, would be in the unlikely event that the coal company was seeking to obtain federal coal leases more than once per quarter.
8. In developing the reporting criteria for these forms, the Department consulted a number of outside sources. First, the Department contacted a cross-section of coal reserve holders in the West and inquired as to how they classified their coal holdings. The criteria adopted by the Department appear to be consistent with the criteria they use. The companies contacted were: Exxon U.S.A., Northern Coal Company, Peabody Coal Company, Rocky Mountain Energy, Utah International, Inc., Utah Power & Light Company, and Western Slope Carbon, Inc. Second, the Department formulated the criteria on the form entitled "Western Federal Coal Lease Form" in conjunction with ICF, Inc., a consulting firm that had done extensive work on coal reserve information. ICF's participation in this project was funded by Consolidation Coal Company, but the company

did not participate in the formulation of the criteria. Since these forms have been in use, the Department has continued to consult informally with companies about the clarity and other aspects of the forms. In addition, both forms include an estimate of the respondent's burden in completing the forms and invite any comments that the respondents might have regarding the collection of information. Thus far, the Department has not received any suggestions pursuant to this request detailing any means of further minimizing the burden imposed.

9. There are no payments made to respondents.
10. Interior, the agency responsible for federal coal leasing, will direct prospective lessees, as to where to find the forms. Interior will transmit the completed forms to the Department for its review. The information will be transmitted in a sealed envelope, and the Department will accord it the fullest protection from disclosure permitted by law. The Department believes that the information qualifies for the exception to disclosure under the Freedom of Information Act that applies to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4)(1976).
11. The forms do not seek information of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.
12. The forms must be completed each time there is an issuance, transfer or exchange of a federal coal lease. The number of lease issuances and exchanges is controlled primarily by Interior. The number of lease transfers is controlled by the coal companies holding the leases. The Department estimates that there will be a total of 20 reviews of lease issuances, transfers and exchanges per year for the foreseeable future. In the past, prospective lessees rarely, if ever make more than one application per year. Thus, the Department anticipates collecting information from 20 coal companies per year. Based upon the available information about the way in which companies maintain their coal reserve information, completing these forms will not be burdensome. Companies that use reserve criteria similar to those used in the forms should be able to complete the forms in a short time, probably 15 minutes or less. Other companies will have to do some arithmetic and make some adjustments in order to conform their information to the criteria used in the forms. However, this should not be very burdensome. Companies are asked to estimate where necessary and are in no way required to compile additional information. Companies should be able to complete either of these forms in about two hours. Assuming average personnel costs of \$15.00 per hour, the cost preparing this information will be \$30.00 for each coal company.

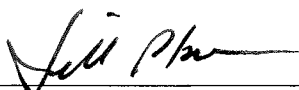
13. No costs to the coal company. Upon completion of the form, the company has no ongoing collection burden.
14. The average time for processing the information submitted on the forms should be about 30 minutes. The cost of analyzing and processing the information from the forms by the Department employee represents approximately one-and-a-half days of that employee's time and \$671.28 using the appropriate assumption for wages and benefits.
15. There are no program changes or adjustments to this collection. The collection will be approved at the current burden levels.
16. There are no plans to publish this information. This information is only for internal use to evaluate the competitive impact of issuances, transfers and the exchange of federal coal leases to determine whether such a lease transfer is consistent with the antitrust laws.
17. The Antitrust Division will display the OBM number and expiration date on the form.
18. There are no exceptions to the "Certification for Paperwork Reduction Act Submissions."

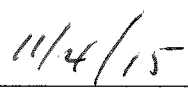
B. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.

PAPERWORK CERTIFICATION

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 C.F.R. § 1320.

  
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Jill Ptacek  
Attorney  
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U.S. Department of Justice

  
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Date