

Supporting Statement A
30 CFR 877 – Rights of Entry

OMB Control Number 1029-0055

Terms of Clearance: None

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.***

Statutory authority for this requirement is found in Section 407 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, as amended. Section 407 requires that nonconsensual (police power) entry can be obtained where land or water resources have been adversely affected by past coal mining practices, and that the adverse effects are at a stage where public interest, action to restore, reclaim, abate, control or prevent should be taken. Section 407 of SMCRA requires that notice be given by mail to the owners, if known, or if not known, by posting a notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies.

- 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.***

30 CFR 877.13 requires that, prior to entry on a landowner’s property OSMRE, the State or Indian tribe shall find in writing and provide to the landowner, with supporting reasons that -- (1) Land or water resources have been or may be adversely affected by past coal mining practices; (2) The adverse effects are at a state where, in the interest of public health, safety, or the general welfare, action to restore, reclaim, abate, control or prevent should be taken; and (3) The owner of the land or water resources where entry must be made to accomplish the action stated is not known or readily available, or the owner will not give permission for the OSMRE, State or Indian tribe or its agents, employees or

contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices. The written notice to the landowner provides a standardized administrative vehicle for entry on private lands by the agents of OSMRE, the State or Indian tribe and makes it necessary for them to provide the landowner with the reasons why the entry and the reclamation activity/exploration are necessary. It also gives the landowner an opportunity to object to the entry or to otherwise oppose it by legal means. Section 877.11 states that written consent from the landowner is the preferred means for receiving approval to enter onto the property to conduct Abandoned Mine Land (AML) activities.

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.***

The letters, notices, and newspaper announcements must be delivered in paper format, although they are prepared on computers. It is not possible to supply the information by electronic means.

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 pertaining to site-specific entry for reclamation purposes is collected by OSMRE or by other Federal agencies.

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

Small businesses are not affected by this regulation.

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 is normally a one-time information collection conducted only in the event of potential adverse effects to public health, safety and welfare.

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.*

There are no circumstances that require the collection of information to be conducted in a manner inconsistent 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.

Consultations were held with Pennsylvania, Tennessee, Virginia and West Virginia State officials as noted below:

Date of consultation: January 26, 2017

State: Office of Surface Mining Reclamation and Enforcement (OSMRE)
Title: Physical Scientist
Address: Office of Surface Mining Reclamation and Enforcement
Three Parkway Center
Pittsburgh, PA 15220

State: Pennsylvania
Title: Chief, Real Estate Appraiser
Address: Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
Harrisburg, PA 17101

State: West Virginia (DEP)
Title: Environmental Resources Program Manager 2
Address: West Virginia Department of Environmental Protection
101 Cambridge Place, Room 27
Bridgeport, WV 26330

State: Tennessee
Title: AML Program Manager, Land Reclamation Section
Address: Division of Water Resources
3711 Middlebrook Pike
Knoxville, TN 37921

Summary: As previously reported in 2013, 30 CFR 877 is an extremely important aspect of the surface mining program, especially when access is needed to properties that are critical to the success of the program. The information collection requirements do not pose an undue burden. The states have timely procedures in place to handle appeals resulting from non-consensual entry.

These individuals provided burden estimates and response estimates which have been used to estimate burdens and costs in items 13 through 15 below.

On March 7, 2017, OSMRE published in the Federal Register (82 FR 12840) 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 provided 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 requested.

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. Instead, this cost should be included under “Annual Cost to Federal Government.”***

Estimated Hour Burden

These estimates are based upon consultation between OSMRE and state staff familiar with these requirements and discussions with the individual identified in item 8 above.

There are 24 regulatory authorities and 4 Indian Tribes, or 28 potential respondents. Of the 28 potential respondents, access to conduct AML reclamation activities were used to enter onto private property to conduct AML activities recently only in eight states. In these states, Right of Entry was conducted 336 times in 2016. For each project, an average of five notices was required to be prepared and mailed to property owners. Each notice required approximately one and a half hours to prepare and deliver to the

homeowner. Therefore, the estimated annual burden would be 336 projects x 5 notices x 1.5 hours per notice = 2,520 hours annually.

Estimated Annualized Wage Cost

Using U.S. Department of Labor's Bureau of Labor statistics (https://www.bls.gov/oes/current/naics4_999200.htm#43-0000) an engineering technician who prepares and sends each notice earns \$22.87. Including benefits calculated at a rate of 1.6 of hourly wages as derived from the U.S. Bureau of Labor Statistics news release USDL-16-2255, entitled EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—SEPTEMBER 2016, published December 8, 2016 (<http://www.bls.gov/news.release/pdf/ecec.pdf>), the wage cost is \$36.59 per hour with benefits.

Therefore, the annual cost for respondents is \$36.59/hour x 2,520 hours = \$92,207.

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.***

Estimated Total Annual Non-wage Cost

There are no significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of 30 CFR 877.11 and 30 CFR 877.13, other than the newspaper notice required by 30 CFR 877.13(c) when a property owner cannot be identified. We estimate that in 2016 there were 13 instances when regulatory authorities could not identify the landowner, and a newspaper notice would have been required. Therefore, 13 x \$250 per newspaper notice = \$3,250 total annual non-wage cost.

- 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.***

Estimate of Cost to the Federal Government.

Oversight: In keeping with the current guidance concerning oversight of State program implementation, which de-emphasizes process reviews, OSMRE does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 877 in the absence of any indication of problems. Assuming that OSMRE conducts an oversight review of this topic for one State program per year and that the review requires an average of 2 hours, the annual cost to the Federal government for this oversight activity is an estimated \$132.

(An OSMRE employee earning \$41.12 per hour at the GS 13, step 1 salary will conduct this oversight review. This salary is derived from OPM's Website https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/RUS_h.pdf. OSMRE includes benefits at a rate of 1.6 as a ratio between wages and benefits which are derived using the BLS news release USDL-16-2255. Therefore, the hourly Federal wage cost is $\$41.12 \times 1.6 = \65.79 , or \$131.58 for two hours, and is rounded to \$132.)

Federal Programs: OSMRE is the regulatory authority under Federal programs not administered by a primacy State. OSMRE there were no instances where notices were needed for Federal Program Projects.

Therefore the total cost to the Federal Government would be \$132.

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

The estimate below is based on OSMRE staff expertise in reclamation projects and the information provided by the individuals identified in item 8, above. Based on discussions with regulatory authorities and OSMRE staff, written notice is the preferred method for

obtaining landowner approval, and, therefore, is used in all instances, even when the landowner initiates the request for AML projects on their lands. Based on information collected from the States an average of five notices are sent for each project since most AML projects encompass lands affecting multiple property owners, not just one property.

This information collection request reduces the burden estimate currently approved by OMB. Although the burden estimate per response has remained the same, OSMRE has recalculated the number of instances where notices are prepared and mailed by State regulatory authorities which has decreased from 416 annually, to 336 projects. Therefore, OSMRE seeks approval for the following burden estimate:

3,120	Hours currently approved by OMB
-	<u>600</u> Hours due to a re-estimated in use
2,520	Hours requested

This information collection request reduces the currently approved non-wage costs to regulatory authorities from \$10,400 to \$3,250. This is due to a re-estimate in the instances where newspaper notices are required when regulatory authorities cannot identify or locate property owners and must publish notices about future AML projects. This non-wage burden decrease is due to the states being better able to locate landowners more efficiently. This non-wage reduction is offset by an increase in costs to publish newspaper announcements.

- 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.**

There are 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.**

Not applicable. The OMB control number is displayed in 30 CFR 877.10.

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

Not applicable. No exception is requested.