



Western Interstate Energy Board/ WINB

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Administrative Record
Room 252-SIB
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The Reclamation Committee of the Western Interstate Energy Board submits the following comments on proposed changes to *30 CFR Parts 740, 905, 910 et al. Permit Application Packages*. The Committee consists of the State Regulatory Authorities in Colorado, Montana, New Mexico, Utah and Wyoming. These States mine a majority of the coal in the nation, most of which is federal coal. Each of these States has a Cooperative Agreement with the Office of Surface Mining (OSM) regarding the review of mine plans on Federal lands.

The Committee shares the objectives of OSM and the Office of Management and Budget (OMB) to reduce the submission of unnecessary copies of mine plan documents. Indeed, states are moving toward increasing the electronic filing of mine plan documents. However, the proposed rule:

1. Is an inappropriate micromanagement of the States' authority to determine the required mine plan document filings necessary to execute its responsibilities under the Cooperative Agreement with OSM;
2. Will result in an outcome that is directly contrary to the plain language of the Paperwork Reduction Act of 1980 by increasing the paperwork burden on States; and
3. Should only be implemented after OSM and OMB have received commitments that other federal agencies, which are required to review mine plan documents, will accept electronic copies and not require paper copies of documents AND that their use of electronic copies will not delay the execution of their review responsibilities.

Micromanagement of State Regulatory Programs

The proposed micromanagement of State mine plan review processes, as envisioned by the proposed rule, is an inappropriate role for the Office of Surface Mining. Micromanagement by the Federal government specifying the number of copies of a document an applicant should submit to the State program was never contemplated in the execution of Cooperative Agreements between western States and OSM. Such micromanagement was inappropriate at the time the Cooperative Agreements were signed and it is inappropriate today.

Contrary to the Paperwork Reduction Act

Two purposes of the Paperwork Reduction Act are to:

- (1) “minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government...”
- (6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government...” (Section 3501)

The *Federal Register* notice correctly expresses the intent of the Act when it states: “This law was enacted to minimize the paper work burden for individuals, businesses, State, local and Tribal government.” (emphasis added) Unfortunately, the proposed rule will increase the burden on State government by potentially requiring State agencies to reproduce necessary hard copies of mine plan documents which, for major Western mines, can reach 20 three inch-three ringed volumes in length.

The *Federal Register* notice goes on to state: “Thus, the reduction in the number of copies that permit applicants are required to submit for operations on Federal lands under the proposed rule, would shift the burden of making additional copies of the permit application packages to the Federal government or the State regulatory authority with a cooperative agreement under 30 CFR part 745.” Amazingly, OSM then concludes in the next sentence that: “This shift is consistent with the purposes of the Paperwork Reduction Act...”

Contrary to OSM’s conclusion, shifting the paperwork burden to State is inconsistent with the Act. This rule will increase the burden on States and weaken the partnership between the Federal government and the Western States.

Rule Should Be Implemented Only If Federal Agencies Accept Electronic Copies

Under the State-OSM Cooperative Agreements, Federal agencies such as the Bureau of Land Management, the U.S. Forest Service and the Fish and Wildlife Service, are required to review elements of mine plan documents. Sometimes those Federal agencies require paper copies of documents to review. They will not accept, or their review of documents will be delayed, if they receive only electronic copies of documents. The position of these Federal agencies undercuts the practical benefits from reducing the number of copies of documents submitted by the applicant and places the State Regulatory

Authority in the difficult and costly position of having to produce hard copies of documents to ensure that the Federal agencies complete their reviews in a timely manner.

If the Office of Surface Mining decides to implement the proposed rule, it should only do so after it has received written confirmation from all field offices of Federal agencies that are required to review documents under the Cooperative Agreement, that such agencies will a) accept electronic copies of documents and b) that the use of electronic copies will not delay the completion of the required reviews.

Such a conditional implementation of the proposed rule would foster four explicit purposes of the Paperwork Reduction Act:

“(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resource management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs including, the reduction of information collection burdens on the public and the improvement of service delivery to the public;

“(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

“(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

“(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resource management, and related policies and guidelines established under this subchapter.” (Section 3501)

Finally, if the Office of Surface Mining decides to implement the rule, it should place no restrictions on the number of electronic copies to be filed with the State.

Recommendations

1. **OSM should not adopt the proposed rule.**
2. **If OSM decides to adopt the rule, it should be amended to read:**

§ 740.13 Permits. (b)(2) When OSM is the regulatory authority, one complete permit application package shall be filed with the appropriate OSM office in the format specified by that office. When a State is the regulatory authority under a State-Federal cooperative agreement, the appropriate State office [shall] may specify the format and number of copies of each complete permit application package to be filed with that office. [, so long as the State office does not require more than] If the State office does not specify the number of copies, one original and two copies of the complete application package shall be filed with the appropriate State office.

Additions are underlined; deletions are in brackets.

3. **OSM should continue its electronic permitting technical assistance efforts to enable applicants, OSM and State Regulatory Authorities to move closer to paperless application and review processes.**
4. **The Secretary of the Interior should direct agencies within the Department which participate in mine plan reviews to accept electronic copies of applications and ensure that the timeliness of the reviews is accelerated, not delayed, by the use of electronic copies of applications.**
5. **The Office of Management and Budget should encourage Federal agencies involved in mine plan reviews, outside the Interior Department, to accept electronic mine plan applications and expeditiously process such applications.**

Sincerely,



Richard A. Chancellor, Chairman
Reclamation Committee
Western Interstate Energy Board

cc: Brent Wahlquist
Al Klein
WIEB Reclamation Committee

