

Dated: June 20, 2000.

V. LeGrand Neilson,

Deputy Regional Director.

[FR Doc. 00-15904 Filed 6-22-00; 8:45 am]

BILLING CODE 4310-MN-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 733, Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs; 30 CFR part 785, Requirements for permits for special categories of mining; and 30 CFR part 876, Acid mine drainage treatment and abatement program, have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 24, 2000, in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of any of the three information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208-2783. You may also contact Mr. Trelease at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted three requests to OMB to renew its approval for the collections of information found at 30 CFR parts 733, 785 and 876. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029-0025 for part 733, 1029-0040 for part 785, and 1029-0104 for part 876, and may be found in OSM's regulations at 733.10, 785.10 and 876.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collections of information for parts 733 and 875 was published on March 10, 2000 (65 FR 13015), and on April 5, 2000 (65 FR 17900), for part 785. No comments were received from either notice. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

**Title:** Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, 30 CFR 733.

**OMB Control Number:** 1029-0025.

**Summary:** This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts which the person believes establishes the need for the evaluation.

**Bureau Form Number:** None.

**Frequency of Collection:** Once.

**Description of Respondents:** Any interested person (individuals, businesses, institutions, organizations).

**Total Annual Responses:** 2.

**Total Annual Burden Hours:** 200 hours.

**Title:** Requirements for permits for special categories of mining, 30 CFR 785.

**OMB Control Number:** 1029-0040.

**Summary:** The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Pub. L. 95-87, which requires applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

**Bureau Form Number:** None.

**Frequency of Collection:** Once.

**Description of Respondents:** Applicants for coal mine permits.

**Total Annual Responses:** 347.

**Total Annual Burden Hours:** 16,372.

**Title:** Acid mine drainage treatment and abatement program, 30 CFR 876.

**OMB Control Number:** 1029-0104.

**Summary:** This part establishes the requirements and procedures allowing State and Indian Tribes to establish acid mine drainage abatement and treatment programs under the Abandoned Mine Land fund as directed through Public Law 101-508.

**Bureau Form Number:** None.

**Frequency of Collection:** Once.

**Description of Respondents:** State governments and Indian Tribes.

**Total Annual Responses:** 1.

**Total Annual Burden Hours:** 350.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210-SIB, Washington, DC 20240, or electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

Dated: June 20, 2000.

**Richard G. Bryson,**

Chief, Division of Regulatory Support.

[FR Doc. 00-15899 Filed 6-22-00; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Fall Creek Falls, Tennessee, Lands Unsuitable for Surface Coal Mining and Reclamation Operations; Availability of Record of Decision and Statement of Reasons

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice of availability of record of decision and the statement of reasons on the petition to declare certain lands in Fall Creek Falls, Tennessee, unsuitable for surface coal mining.

**SUMMARY:** The Secretary of Interior has reached a decision on a petition to designate certain areas as unsuitable for

surface coal mining operations in Fall Creek Falls, Bledsoe and Van Buren Counties, Tennessee

**ADDRESSES:** Copies of the decision and the statement of reasons for the decision may be obtained from the Assistant Director, Program Support, Office of Surface Mining Reclamation and Enforcement (OSM), 1951 Constitution Avenue, HDQ01, Washington, D.C. 20240, or Beverly Brock, Supervisor, Technical Group, Knoxville Field Office, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

**FOR FURTHER INFORMATION CONTACT:** Beverly Brock, Office of Surface Mining Reclamation and Enforcement, Knoxville Field Office, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902; telephone (865) 545-4103, extension 146; or e-mail: bbrock@osmre.gov.

**SUPPLEMENTARY INFORMATION:** The petition was submitted to OSM on July 14, 1995, by Save Our Cumberland Mountains and Tennessee Citizens for Wilderness Planning to designate 85,588 acres of land lying in the watershed and viewshed of the Fall Creek Falls State Park and Natural Area, Bledsoe and Van Buren Counties, Tennessee, as unsuitable for all types of surface coal mining operations. OSM determined the petition to be complete on October 5, 1995, and initiated evaluation of the petition allegations.

The petition was filed in accordance with Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing regulations at 30 CFR 942.764. The petitioners had five primary allegations: (1) Reclamation is not technologically and economically feasible; (2) mining the area would affect fragile or historic lands which could result in significant damage to important historic, cultural, scientific, or esthetic values; (3) mining the area would affect renewable resource lands which could result in a substantial loss or reduction in long-range productivity of water supply or of food or fiber products; (4) mining would affect natural hazard lands which could substantially endanger life and property; and (5) mining the area would be incompatible with existing State or local and use plans or programs.

Pursuant to 30 CFR 942.764, OSM analyzed the allegations of the petition and on June 18, 1998, held a public hearing. OSM filed the final petition evaluation document/environmental impact statement (PED/EIS) for the Fall Creek Falls petition with the Environmental Protection Agency (EPA) on February 24, 2000. The EPA subsequently published the notice of

availability on March 3, 2000 (5 FR 11575).

A copy of the decision signed by the Secretary of Interior appears as an appendix to this notice. Additional copies of the decision are available at no cost from the offices listed above under **ADDRESSES**. OSM has sent copies of this document to all interested parties of record.

Prior **Federal Register** notices on the Fall Creek Falls unsuitability petition were the notice of intent to prepare an EIS published in the **Federal Register** dated November 3, 1995 (60 FR 55815) and the notice of availability of the draft combined PED/EIS dated May 1, 1998 (63 FR 24192).

Dated: June 13, 2000.

**Allen D. Klein,**

*Director, Appalachian Regional Coordinating Center.*

## **Appendix: Copy of Letter of Decision and Record of Decision and Statement of Reasons**

### **Letter of Decision**

#### **Designation of Certain Lands in the Watershed of Fall Creek Falls State Park, Tennessee, as Unsuitable for Surface Coal Mining Operations**

Pursuant to Section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C. 1272], the Office of Surface Mining (OSM) was petitioned by 49 citizens, Save Our Cumberland Mountains, and Tennessee Citizens for Wilderness Planning to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for all types of surface coal mining operations.

In accordance with Section 522(d) of SMCRA [30 U.S.C. 1272(d)] and Section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4332(2)(C)], the OSM's Knoxville Field Office (KFO) prepared a detailed Petition Evaluation Document/Environmental Impact Statement (PED/EIS). The PED/EIS analyzed the petitioners' allegations, the potential coal resources of the petition area, the demand for coal resources, the impacts of such designation on the environment, and the economy, and alternative actions available to the decision maker.

I have considered the information in the Fall Creek Falls administrative record, including but not limited to the petition and exhibits, information obtained by KFO, analysis of the petitioners' allegations and the environmental impacts of the alternative actions contained in the final PED/EIS,

written comments received on the draft and final PED/EIS's and oral comments received at the public hearing. Based on the analysis of the information contained in the Fall Creek Falls administrative record and presented in the final PED/EIS, I have reached the following decision, as set out in the Record of Decision and Statement of Reasons.

(1) I am exercising my discretion to designate Fall Creek Falls State Park and Natural Area and the Cane Creek, Falls Creek, and Meadow Creek watersheds as unsuitable for all types of surface coal mining operations in accordance with 30 U.S.C. § 1272(a)(3)(A) and (B) and 30 CFR 762.11(b)(1) and (b)(2).

(2) I am exercising my discretion to designate the Piney Creek watershed as unsuitable for surface coal mining operations; *provided, that* a surface coal mining operation may be permitted only in the upper portions of the watershed if a portion of the proposed operation includes previously mined areas and the permit applicant demonstrates that water quality in receiving streams will not be degraded.

(3) I am not designating any lands within the Dry Fork watershed as unsuitable for surface coal mining operations.

Copies of this decision will be sent to all parties involved in this proceeding. The decision will become effective on the date of the signing of the Record of Decision and Statement of Reasons. An appeal of this decision must be filed within 60 days from the date below in the United States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA [30 U.S.C. § 1276(a)(1)].

Dated: June 17, 2000.

Bruce Babbitt,

*Secretary of the Interior.*

### **Petition To Designate Certain Lands Around Fall Creek Falls, Tennessee as Unsuitable for Surface Coal Mining Operations**

#### **Record of Decision and Statement of Reasons**

##### **I. Introduction**

In response to a petition filed by 49 citizens, Save Our Cumberland Mountains, and Tennessee Citizens for Wilderness Planning, I have decided to designate Fall Creek Falls State Park and selected watersheds within the petition area, in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining operations, with one limited exception as discussed below. The following is a discussion of the reasons supporting my decision.

## II. Legal Background

Section 522(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) allows any person having an interest that is or may be adversely affected to petition to have an area designated unsuitable for surface coal mining operations. Under Section 504 of SMCRA, the Secretary of the Interior is responsible for designating lands in Tennessee as unsuitable. The Secretary of the Interior has delegated to the Director of the Office of Surface Mining (OSM) the authority to make a final decision on lands unsuitable petitions except for noncoal mining [216 DM.1.1].

The SMCRA regulatory program for Tennessee is set out at 30 CFR Part 942. Under that program, OSM is the regulatory authority for Tennessee. Specific criteria and procedures for processing a petition to designate non-Federal lands in Tennessee are incorporated by reference in 30 CFR 942.762 and 942.764. Those sections incorporate the criteria set out in 30 CFR Part 762 and the procedures set out in 30 CFR Part 764. OSM has complied with these provisions in reaching its decision on the Fall Creek Falls petition.

SMCRA provides that the regulatory authority *shall* designate an area unsuitable if it determines that reclamation pursuant to the requirements of SMCRA is not technologically and economically feasible [Section 522(a)(2)]. The regulatory authority *may* designate any area unsuitable if such operations will (1) be incompatible with existing State or local land use plans or programs [Section 522(a)(3)(A)]; (2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems [Section 522(a)(3)(B)]; (3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products [Section 522(a)(3)(C)]; or (4) affect natural hazard lands in which such operations could substantially endanger life and property [Section 522(a)(3)(D)].

The petition in this case proposes that designation of the Fall Creek Falls petition area be made on the basis of the criteria of Sections 522(a)(2) and 522(a)(3)(A), (B), (C) and (D). The petition contains numerous factual allegations and documentation to support the petitioners' claims that the area should be designated under the mandatory and discretionary criteria.

## III. Events

The petition area encompasses the watersheds of Piney Creek, Falls Creek, and Meadow Creek, and portions of Cane Creek and Dry Fork watersheds. The petition area is approximately 85,588 acres, located in Bledsoe and Van Buren Counties, Tennessee.

The Fall Creek Falls unsuitability petition was submitted to OSM's Knoxville Field Office (KFO) on July 14, 1995, by 49 citizens and two organizations, Save Our Cumberland Mountains and Tennessee Citizens for Wilderness Planning. KFO determined the petition to be complete on October 5, 1995, and initiated evaluation of the petition allegations.

Because the decision on this petition may have a major effect on the quality of the human environment, KFO decided to prepare a combined petition evaluation document (PED) and environmental impact statement (EIS). A notice of intent to prepare a draft PED/EIS, including a request for public participation in determining the scope of the issues to be addressed, was published in the November 3, 1995, **Federal Register** (60 FR 55815) and in the November 15, 1995, Tennessee Administrative Record. It was also mailed to all persons with an identifiable ownership interest in the petition area and interested State and Federal agencies. A scoping meeting was held on December 5, 1995, at Fall Creek Falls State Park. Approximately 180 persons attended the scoping meeting, 25 of whom presented oral comments.

By the close of the scoping comment period, on January 26, 1996, KFO had received 49 scoping comment letters. In determining the scope of the PED/EIS, KFO considered all comments contained in the public record for the petition and the proposed PED/EIS.

KFO announced the availability of the draft PED/EIS and requested public comments in the May 1, 1998 **Federal Register** (63 FR 24192) and in local newspapers. In these notices and newspaper advertisements, KFO also gave notice of the June 18, 1998, public hearing. KFO provided three public comment periods on the draft: May 1 to July 30, 1998; August 21 to September 16, 1998; and January 29 to April 29, 1999.

Approximately 350 persons attended the June 18, 1998 hearing, and 45 persons presented oral comments. During the comment period, 606 letters provided written comments on the draft PED/EIS. All comments were considered in the final PED/EIS.

The notice of availability of the final PED/EIS was published in the **Federal Register** on March 3, 2000 (65 FR 11575 and 11604); in the Tennessee Administrative Record on March 15, 2000; and in seven local or major newspapers across the State. Governing regulations at 40 CFR 1506.10(b)(2) require that no decision on the petition be made until 30 days after the PED/EIS is made available to the public. This prescribed wait period was extended to May 3, 2000 (65 FR 15921, March 24, 2000).

## IV. The Petition

The Fall Creek Falls Lands Unsuitable for Mining petition contained five primary allegations, with numerous factual allegations and suballegations. The petition is printed in Appendix B of the final PED/EIS. The five primary allegations in the petition are summarized as follows: (1) Mining the area would affect fragile or historic lands which could result in significant damage to important historic, cultural, scientific, or esthetic values; (2) mining the area would affect renewable resource lands which could result in a substantial loss or reduction in long-range productivity of water supply or of food or fiber products; (3) mining would affect natural hazard lands which could substantially endanger life and property; (4) mining the area would be incompatible with existing State or local land use plans or programs; and (5) reclamation is not technologically and economically feasible.

## V. Decision Alternatives

KFO evaluated several decision alternatives ranging from designating all lands in the petition area unsuitable for all surface coal mining operations (the proposed action in the Petition) to not designating any of the lands in the area as unsuitable for surface coal mining operations (alternative 1). Other alternatives considered included not designating any of the lands in the area as unsuitable, but requiring an environmental impact statement for any surface coal mining operation proposed in the area (alternative 2), the "No Action" alternative (alternative 4), and various options for designating only parts of the area as unsuitable for all or certain types of surface coal mining operations (alternative 3). The options considered under alternative 3 included designating portions of the area as unsuitable for certain types of coal mining operations based on the presence of acid-forming materials or based on mining method (alternative 3a), designating selected coal resources within the area as unsuitable for certain

types of surface coal mining operations (alternative 3b), and designating selected watersheds within the area as unsuitable for certain types of surface coal mining operations (alternative 3c, the preferred alternative). The full text discussion of the petition decision alternatives and their environmental impacts is found in Chapter V of the final PED/EIS. The rationale for selection of alternative 3c as the preferred alternative is discussed at length in Section VII of this document.

Arguably, the environmentally preferable alternative is the proposed action, which is to designate all lands within the petition area as unsuitable for surface coal mining operations. This would provide the maximum level of environmental protection for the petition area, because no mining activities could occur within the petition area, regardless of the likelihood of environmental impacts. However, as outlined in this Record of Decision and Statement of Reasons, I have determined that there would be significant benefits from re-mining in the headwaters of the Piney Creek watershed, and that re-mining operations would be unlikely to affect the natural resources of the Park. I have also determined that surface coal mining operations in Dry Fork watershed would be unlikely to have any significant effect on the Park's surface resources.

I have also considered the purposes set out in SMCRA Section 102. I have concluded that this decision best balances all of these purposes, including those set out in Sections 102(a), (d), (f), (h), and (m). These sections state that "it is the purpose of this Act to—(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations; \* \* \* (d) assure that surface coal mining operations are so conducted as to protect the environment; \* \* \* (f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy; \* \* \* (h) promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public; \* \* \* and (m) wherever necessary, exercise the full reach of Federal constitutional powers

to insure the protection of the public interest through effective control of surface coal mining operations." Further, this decision best implements the requirements of Section 522(a), for the reasons set out below. The preferred alternative provides for designation of the Falls Creek, Meadow Creek and Cane Creek watersheds, the lower reaches of the Piney Creek watershed, and the Park as unsuitable for mining. This alternative provides the environmental protections needed for the fragile resources of the Fall Creek Falls State Park and for the Park's land use plans and program.

The preferred alternative allows mining in the headwaters of the Piney Creek watershed, which has been extensively impacted by unreclaimed or unregulated surface coal mining operations. A mining operation would be required to include re-mining of previously mining-impacted areas. This alternative would provide significant potential benefits to Piney Creek watershed through reclamation of mining-impacted lands, restoration of stream biological communities and over-all improvements to water quality in the Piney Creek watershed. Allowing mining in the Dry Fork watershed is not predicted to have any significant impacts on the Park's fragile surface resources or land use plans and programs because Dry Fork subsides underground during low flow six miles before it reaches the Park boundaries and reemerges approximately six miles north of the Park. Mining in the Dry Fork watershed also is predicted to have little or no impact on the ground water systems of Dry Fork and the Park. This is because the waters of Dry Fork undergo beneficial chemical changes as the creek flows underground into the karst system. That system neutralizes any acidic changes that might have occurred from contact with any mining-impacted waters of the upper reaches of the Dry Fork watershed, where the coal reserves are located. Thus, allowing mining and re-mining of the upper reaches of the Dry Fork watershed would have similar beneficial effects on the environment as in the upper reaches of the Piney Creek watershed, *i.e.*, restoration of stream biological communities, over-all improvements to water quality in the Dry Fork watershed, etc. Thus, the preferred alternative provides protection to the Park's fragile resources and land use plans and program and allows restoration of mine-impacted areas in the upper reaches of the Piney Creek and Dry Fork watersheds. Approximately 6.58 million tons of coal in the Dry Fork watershed

and 8 million tons in the Piney Creek watershed would be available for extraction to help meet energy demands with no significant risk to the Park's resources. Under the preferred alternative, no mining could occur in the lower portions of the Piney Creek watershed closer to the Park where risk of impact on the Park is greater. In the headwaters of the Piney Creek watershed, mining would be allowed only on a case-by-case basis when the operation includes areas previously disturbed by mining and the applicant demonstrates the water quality will not be degraded, and that impacts from previous mining will be mitigated.

The analyses in the PED/EIS predict that should there be a failure of a mining operation in the headwaters of Piney Creek, degraded stream conditions are likely to dissipate before reaching Park boundaries, causing no significant impact on the Park's water quality. Thus, the preferred alternative protects the fragile resources of the Park, minimizes the likelihood of conflict with the State's land use plans for the Park, and provides for restoration and reclamation of the mining-impacted lands and waters of the watersheds.

## VI. Findings

The petitioners presented five primary allegations which mirror the five designation criteria of SMCRA Sections 552(a)(2) and (a)(3) and 30 CFR 762.11(a) and (b)(1) through (b)(4).

The petitioners also presented numerous allegations of fact and sub-allegations of fact in support of the five primary allegations. The intervenors presented allegations in rebuttal to the petitioners' five primary allegations, the allegations of fact, and the sub-allegations of fact. A summary of the petitioners' and the intervenors' allegations follows, along with my findings relative to each allegation. The primary allegations are presented in the order in which they appear in the petition. These findings are based upon all the information contained in the public record for this petition.

### A. Primary Allegation No. 1—Fragile or Historic Lands

1. *Petition allegation*—The petition area should be designated unsuitable for surface coal mining operations because mining the area would affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems.

a. The petitioners allege that mining within the petition area would affect the hydrologic balance of the watersheds which drain into the Fall Creek Falls

State Park and affect the Park's unique hydrologic resources. They further allege that the primary reason the Park was set aside was because of its waters and water-formed features and that the watershed areas outside of the Park are critical to the existence of the Park. The petitioners also allege that streams, aquatic life and the falls are at risk when mining occurs in the Sewanee coal seam.

The intervenors allege that the petition area does not meet the regulatory definition of "fragile lands" and that the petition does not provide any supportive evidence that mining in accordance with SMCRA would significantly affect the alleged factors identified or cause any identified significant damage to these values.

b. The petitioners allege that changes in water chemistry, changes in pH, increases in siltation, and changes in stream flow would result in significant damage to the wildlife which depend on the streams as habitat and/or sources of drinking water. The petitioners state that Cane Creek, which is the principal watercourse through Fall Creek Falls State Park, has been designated an environmentally sensitive stream by the Tennessee Department of Environment and Conservation (TDEC) and, therefore, the petition area qualifies as fragile lands.

The intervenors allege that the designation of a specified portion of Cane Creek as an environmentally sensitive stream by the State does not equate to the surrounding host landscape as fragile lands.

c. The petitioners allege that the presence of endangered species qualifies the petition area as fragile lands.

The intervenors allege that the presence of threatened and endangered species in the petition area does not qualify the area as fragile lands.

d. The petitioners allege that Cane Creek, downstream of the Park boundary, is a stocked trout stream and cite a letter written by the Fish and Wildlife Service stating that Cane Creek is considered the best stocked trout stream on the Cumberland Plateau. Further, the petitioners allege that untreated water discharging from surface coal mining operations would seriously degrade the water quality of Cane Creek and would be toxic to stream biota in the vicinity of the outfall and for an unknown distance downstream.

The intervenors allege that: (a) Trout stocking activities occur approximately 13 miles downstream from the petition area proper, (b) historic water quality data collected from Cane Creek does not support the allegation of water

degradation as stemming from past surface coal mining operations, and (c) advanced mining and reclamation technologies are being implemented to significantly minimize and/or prevent off-site damage to receiving streams. The intervenors also allege that trout stocking in Cane Creek below the Park does not qualify the petition area as fragile lands.

e. The petitioners allege that the presence of caves and cave-inhabiting species makes the petition area a fragile land. The petitioners further allege that mining-induced degradation of Cane Creek could also adversely affect the aquatic life in the caves located in the Cane Creek gorge as well as the Indiana bat, a Federally-listed endangered species, that inhabits caves in the area. The petitioners also allege that underground mining usually results in subsidence, either planned or unplanned, and that subsidence could alter the flow of the groundwater, resulting in the dewatering of streams and, consequently, diverting flows from the caves.

The intervenors allege that the presence of caves, cave-inhabiting species, and the occurrence of endangered cave species does not qualify the petition area as fragile lands.

f. The petitioners allege that the presence of rare floral species in the petition area qualifies the area as fragile lands. The petitioners further allege that off-site effects of surface coal mining operations within the petition area could have a severe adverse impact on a number of rare floral species.

The intervenors allege that the presence of threatened and endangered species in the petition area does not qualify the area as fragile lands.

g. The petitioners allege that surface coal mining operations would access areas that are currently remote and thereby cause adverse effects on habitats and wildlife from foot and vehicle travel, pollution, and other factors relating to more human contact in the area. The petitioners also allege that surface coal mining operations in the Cane Creek watershed could have a direct and negative impact on TWRA's long-term plans to use the area as turkey and otter habitat.

The intervenors allege that, for the most part, the entire petition area proper is already "honey-combed" with multiple access avenues and that access requirements stemming from any future mine development can utilize the majority of existing roads, power lines, water lines, *etc.*, without causing any further significant disturbances to the area. The intervenors further allege that SMCRA provides flexibility to develop

reclaimed areas that are suited to turkey and otter habitats.

h. The petitioners allege that esthetics are essential to the Park's land use plans and that surface coal mining operations outside the Park are incompatible with the Fall Creek Falls Strategic Management Plan. They allege that surface coal mining operations in the petition area would adversely alter the views from Park overlooks and adversely affect the visitor's experience.

The intervenors allege that the existing tree line, undulating topography, and the buffer zone around the Park itself provide a natural shield for the overlook areas referenced by the petitioners, and that surface coal mining operations in the petition area could not be seen from the natural overlooks in the Park.

i. The petitioners allege that surface coal mining operations would have an adverse impact on historic lands (*i.e.*, the Trail of Tears) in which such operations could result in significant damage to important historic lands. The petitioners also allege that there are burial mounds and cemeteries within the Park and the petition area that require the special protections of designation.

The intervenors allege that the presence of the Trail of Tears within the petition area does not qualify the area as fragile (historic) lands because: (1) The location of the Trail of Tears comprises an extremely small portion, less than three percent, of the petition area and is located in the southern portion of the area; and (2) the Trail of Tears does not meet the definition of fragile lands because a majority of the Trail parallels or overlies existing roadways in the petition area.

j. The petitioners allege that Park visitors use various sections of Cane Creek for swimming and church baptisms and that mining impacts on water quantity and quality would adversely affect the cultural values of these areas.

The intervenors allege that Cane Creek water quality is expected to at least maintain status quo despite future mining initiatives.

k. The petitioners allege that noise and dust would affect Park visitation, local residents, and users of the Trail of Tears.

The intervenors allege that the petitioners' comments are not supported by fact and only reflect biased opinions in favor of selected individual beliefs.

l. The petitioners allege that the Park is a "fragile land" as defined in 30 CFR 762.5 and the watersheds of the Park are the "essence" of the term fragile lands. Therefore, the petitioners assert that the

entire petition area which makes up the watershed of the Park should be designated under the "fragile" criterion.

The intervenors allege that a designation of the entire watershed of the Park as "fragile lands" is not supported by fact.

2. *Findings*—Fragile and historic lands. Based on the record, and for the reasons set out below, I find that surface coal mining operations in the Park or in certain watersheds outside the Park would affect the fragile lands of the Park and certain other fragile lands in the petition area, and could result in significant damage to important petition area natural systems and cultural and esthetic values.

#### a. Fragile Lands in the Petition Area

- Park fragile lands. I find that the Park is fragile land because it has important natural, ecologic, and esthetic resources that could be significantly damaged by surface coal mining operations.

The natural and ecologic resources of the Park include the following:

- The Park provides valuable habitat for threatened and endangered species of fish and wildlife as described in Chapter II, Section H of the PED/EIS.

- Cane Creek inside the Park has numerous occurrences of stream-dependent threatened and endangered species and esthetic resources of high scenic value, forming an environmental corridor within the Park which has a concentration of ecologic and esthetic features as indicated in Chapter V.B.22 of the PED/EIS.

- The Park is a valuable habitat for rare floral species as described in Chapter II, Section H of the PED/EIS.

The esthetic resources of the Park include Fall Creek Falls, Cane Creek Falls, Cane Creek Cascades, Piney Falls, and various viewsheds and gorges throughout the Park.

The Park is an area of high recreational and cultural value due to high environmental quality, and is used for recreational, educational and religious activities.

- Fragile lands in the petition area outside the Park. I find that certain watersheds in the petition area outside the Park are fragile lands because of the existence of natural systems within these watersheds consisting of streams with high water quality and water quantity (Cane, Meadow, and Falls Creek watersheds, and the lower reaches of the Piney Creek watershed).

B. Whether surface coal mining operations will affect fragile lands. I find that surface coal mining operations in the Park or in certain watersheds outside the Park, would affect the fragile

lands of the petition area, because of the inherent environmental impacts of surface coal mining operations, as addressed in Chapter V, Section F of the final PED/EIS. These impacts could potentially damage natural systems and cultural and esthetic values within and outside the Park during the mining and reclamation phases of surface coal mining operations. I find that SMCRA does provide significant environmental protection from inherent impacts through its permitting requirements and performance standards. Nonetheless, although these impacts might be relatively unlikely to cause significant damage, if such damage did occur the risk to park resources would be unacceptable.

Among those inherent impact which may occur in a surface coal mining operation in compliance with SMCRA are:

- Removal of wildlife habitat within the mining area,
- Alterations of the soil and geologic structure,
- Elevated levels of total dissolved solids in surface and ground water,
- Noise, dust, and vibration, and
- Increased sedimentation to the receiving stream from construction of drainage control structures and roads.

In addition, surface coal mining operations in the Park and certain other parts of the petition area could have other impacts on fragile lands, as discussed below.

c. Damage to important natural systems and cultural and esthetic values of fragile lands. I find that surface coal mining operations in the Park and in certain watersheds of the petition area outside the Park would affect these fragile lands and could result in significant damage to the important natural systems, cultural values and esthetic values of these fragile lands, as described below.

#### i. Potential Damage to Park Systems and Values

- Important natural systems. Surface coal mining operations in the Park or in certain parts of the petition area outside the Park could cause significant damage to important natural systems of the Park, including:

- Threatened and endangered species of fish and wildlife and their habitats in the park.
- The environmental corridor along Cane Creek inside the Park, and its ecological and esthetic features.
- The rare floral species and their habitats in the Park.
- Important esthetic values. Surface coal mining operations in the Park or in the petition area outside the Park could

result in significant damage to the important esthetic values of the Park's esthetic resources, including Fall Creek Falls, Cane Creek Falls, Cane Creek Cascades, Piney Falls, and various overlooks, viewsheds, and gorges. Significant damage to these important esthetic resources could adversely affect the Park visitors' experience.

- Important cultural values. Surface coal mining operations in the Park or in the petition area outside the Park could cause significant damage to the important cultural values of the Park, including recreational, educational and religious activities.

#### ii. Potential Damage to Important Natural Systems Outside the Park—Streams

The streams of certain watersheds in the petition area outside the Park (Cane, Meadow, and Falls Creek watersheds, and the lower reaches of the Piney Creek watershed) are important natural systems because they are the primary water sources for the unique waters and water-formed features of the Park and its stream-dependent ecologic resources. Surface coal mining operations in these watersheds could cause significant long-term damage to these waters and features and dependent ecologic resources.

#### iii. Other Findings—Primary Allegation 1

- Threatened and endangered species outside the Park. I find that the record does not demonstrate that the petition area outside the Park is a fragile land because of the existence of threatened and endangered species of fish and wildlife. Few occurrences of these threatened and endangered species have been identified in the petition area outside the Park, and those occurrences are scattered throughout the watersheds. Only one occurrence has been identified in a location of known recoverable coal reserves. Rare floral threatened and endangered species have been identified in areas of known coal reserves at only two locations in the petition area outside the Park. These two locations are in the upper Piney Creek watershed. However, the presence of rare floral species at these two locations in the upper Piney Creek watershed outside the Park is not sufficient to classify either the entire petition area outside the Park or the Piney Creek watershed where they are located as an important ecologic system of the petition area and as a fragile land. This is in part because SMCRA includes protection measures which should, in this case, provide any necessary protections for the species at these two locations. Other rare floral

threatened and endangered species are scattered throughout the remaining four watersheds, with few occurrences in the areas in which they have been identified. These few occurrences are not in areas of known recoverable coal reserves. Concerning the caves and cave habitats for threatened and endangered species, I find that the presence of caves and potential cave habitats for threatened and endangered species in the petition area outside the Park does not justify a determination that they are an important natural system. While these caves may be a potentially valuable habitat for cave-inhabiting species, there are no identified occurrences of cave-inhabiting threatened and endangered species in the petition area. Therefore, I find that the record does not justify a determination that the presence of caves and potential cave habitats in the petition area is sufficient to classify the petition area as an important ecologic system or as fragile lands.

- Trout fishery. I find that neither the Park nor the petition area outside the Park is fragile land because of the existence of a trout fishery, located on a section of Cane Creek that is outside the petition area and the Park.

- Esthetic values outside the Park. I find that the record does not identify esthetic values in the petition area lands outside the Park that justify considering them fragile lands. The petition area outside the Park does not possess either overlooks, gorges and falls like those in Fall Creek Falls State Park, or other significant esthetic values that support designation under the fragile lands criterion.

- Cultural values outside the Park. I find that the record does not demonstrate that the petition area outside the Park is fragile land because of cultural values. Cultural activities in the petition area outside the Park are limited, because the area consists of private land holdings. Typical activities are hunting, fishing, camping, swimming, seed gathering, berrying, *etc.*, by local residents living in the area. There are no developed recreational resources in the petition area outside the Park, and recreation is not a primary land use in any of the watersheds outside the Park. Although the cultural activities referenced above are no doubt important to those living in and near the petition area outside the Park, these activities are not unique to these areas, they do not have uncommon importance in the region, and they are not due to high environmental quality of the lands. Thus, the record does not identify important cultural values in the petition area outside the Park that would

support designation under the fragile lands criterion.

- Terrestrial wildlife. I find that the record does not show the presence of terrestrial wildlife that would justify considering the Park or the petition area outside the Park to be fragile land. I find that the existence in the petition area of habitats for wild turkey and otters does not support considering the petition area to be fragile lands, for the following reasons. The wild turkey is not a threatened or endangered species. Nor has the Park been designated a valuable or a critical habitat for turkeys. The State of Tennessee's wild turkey stocking program is very successful in the Park, and the turkey population is now expanding into the petition area. The turkey stocking by the State is for hunting. Concerning otters, I find that otters are on the State's threatened and endangered list. However, the record shows there have been no occurrences of otters in the Park or in the petition area outside the Park. Further, the record documents no other valuable habitats for other terrestrial wildlife, and indicates that impacts on other terrestrial wildlife from potential surface coal mining operations in the petition area would be minor for the following reasons. Mobile species typically seek food and shelter elsewhere during active mining. Although less mobile species would suffer losses during the land clearing phase of an operation, the contemporaneous reclamation requirements of SMCRA would mitigate impacts on terrestrial wildlife.

- Environmentally sensitive stream. I find that the designation of a portion of Cane Creek, and most recently a portion of Dry Fork, as tier II (environmentally sensitive) streams is a State designation relevant only to the quality of discharge allowed to enter these streams. Although some of the criteria evaluated by the State in making its stream evaluations are similar to those considered in the "unsuitability" review process, any designation of a resource as "fragile land" must be based on whether surface coal mining operations could affect important historic, cultural, scientific or esthetic values or natural systems (regardless of any stream classification for other purposes) and could cause significant damage. As indicated above, I have determined that Cane Creek within the Park and in the petition area outside the Park is an important natural system which may be affected by surface coal mining operations, and that such operations could cause significant damage to this system. As indicated below, mining in the Dry Fork watershed is not predicted

to affect important natural systems or esthetic and cultural values in the petition area. The record does not demonstrate that surface coal mining operations in the Dry Fork watershed would affect the fragile lands of the Park or could cause significant damage to important values or systems. The record also does not demonstrate that surface coal mining operations in the Dry Fork watershed would be incompatible with the State's land use plans and programs. Therefore, the designation of these streams as "environmentally sensitive" is not germane to the determination of whether Cane Creek or Dry Fork, either in the Park or in the petition area outside the Park, should be considered as "fragile land".

- Resources and values in Dry Fork. I find that the record does not justify designation of Dry Fork under the criterion for fragile and historic lands.

The cave system through which Dry Fork flows may provide valuable habitat for cave-inhabiting species which are considered to be important ecological resources. However, water quality and quantity changes originating in the coal resource areas of the petition area would have little effect in the cave areas of the petition area and the Park because of the beneficial chemical changes that take place when the water enters the cave system. Also, as the areas of major coal reserves in this watershed are several miles from the identified cave habitats, I find that there is little likelihood that surface activities associated with surface coal mining operations, such as blasting and clearing vegetative cover, would have a significant adverse impact on the habitat of cave species in the petition area.

There is no evidence in the record that the Dry Fork area contains uncommon geologic formations or paleontologic sites. Nor does it contain any National Natural Landmarks or areas meeting the definition of historic lands based on 30 CFR 762.5. Nor is there any evidence on the record relative to it being an environmental corridor containing a concentration of ecologic and esthetic features or an area of recreational value due to high environmental quality.

The Dry Fork watershed is the second largest watershed in the petition area but it does not provide any surface water to the Park except during an extremely heavy precipitation event. Dry Fork subsides and flows through the cave systems after it enters Dry Fork Gorge. Dry Fork then resurfaces outside the Park and petition area directly into Cane Creek. As a result of Dry Fork flowing underground beneath the Park, the stream does not have a significant



impact on the important natural systems and esthetic and cultural values of the Park. Therefore, I find that surface coal mining operations in Dry Fork watershed would not affect fragile lands in the Park.

d. Factors in evaluating the risk of significant damage. I find that the risks and uncertainties associated with surface coal mining operations conducted in the Park and in certain watersheds outside the Park could result in adverse impacts causing damage to the fragile lands of the Park and those watersheds. When evaluating the risk of damage to the Park from a surface coal mining operation, I considered the probability that a surface coal mining operation will cause damage and the impacts that could result. I find that the record demonstrates that there are a number of uncertainties in evaluating the impacts of surface coal mining operations in such a large petition area, as follows.

- Recoverable coal reserve locations. I find that complete information is not available on the location and character of recoverable coal reserves, and therefore the nature and degree of risks from surface coal mining operations cannot be calculated with certainty. The PED/EIS analysis of recoverable coal resource information was based on the limited available information. The PED/EIS was unable to determine if all coal reserves had been identified. Thus, additional coal resources may be present within the Park and petition area outside the Park, and any such additional coal resources could result in additional uncertainties or risks to the Park. The PED/EIS could not determine any such additional uncertainties or risks, and thus did not calculate with certainty the level of risk to the Park or other protected resources under this designation criterion.

- Location to acid- and toxic-forming materials. The occurrence of potentially acid- and toxic-forming material associated with the coal seams of the petition area is generally uncertain, nonuniform and discontinuous throughout the petition area. Thus, the PED/EIS could not predict with certainty the locations of such materials, or the levels of risks to the Park resources under the designation criteria.

- Long-term success of AMD predictive and preventive techniques. Since the passage of SMCRA in 1977, approximately 205 permits have been issued in the southern coal fields of Tennessee. The majority of these sites have been successfully reclaimed. Eight mines or approximately 3.9 percent of the sites permitted have been identified as perpetual acid mine drainage (AMD)

producers requiring long-term treatment. Four of these permits were issued during the Interim Program when minimal environmental controls were in place. The remaining four were issued between 1984 and 1992, when regulatory authorities were making significant changes to enhance prediction and prevention techniques for potential AMD production. Regulatory authorities, including OSM, are now using improved prediction and prevention techniques, and OSM now requires more and better base-line data from operators as a basis for analyses. Since 1992, KFO has issued nine permits in the southern coal fields, seven of which have developed acid/toxic drainage. The permittee(s) contend that these sites will not produce toxic drainage once reclamation is complete. These seven sites may or may not be long-term producers of AMD. Thus, uncertainties exist even with those more recent permits where enhanced prediction techniques were used; and several more years of experience with these methodologies will be required to verify long-term efficacy in the petition area.

- Water quality impacts of non-acid or non-toxic materials. Some water quality alterations can result from surface coal mining operations in parts of the petition area that do not have acid or toxic materials. Alterations can include significant increases in alkalinity, total dissolved solids, pH, resuspension of iron from previously weathered overburdens or spoils, and generation of manganese. These alterations are associated with large-scale disruptions of strata interacting with ground and surface waters. Available information is not sufficient to predict whether any particular alterations could kill, injure, or impair biota in the areas of discharges, or how far downstream the impacts would be. However, SMCRA does provide permitting requirements and performance standards which should significantly mitigate such impacts.

- Operator error. The success of a toxic material handling plan (TMHP) is contingent on successful implementation of several steps, including: (1) Adequate sampling of the overburden, (2) accurate analysis of the overburden materials, (3) adequate design for handling the acid- or toxic-material, and (4) effective implementation of the TMHP. At any point in these steps, operator error can occur and potentially result in the formation of AMD, which could significantly impact the water resources of the receiving stream.

Although some of the impacts listed above may have low probabilities of occurring, as discussed in Chapter V of the PED/EIS, I find that, if they did occur, the impacts on the Park would be significant and possibly severe.

e. Historic lands—Trail of Tears. I find that the existence of segments of the Trail of Tears within the petition area outside the Park does not make either the Park or the petition area outside the Park a historic land. I find that there are no identified areas that have been certified by the National Park Service, nor does the record demonstrate that there are any areas that retain enough historic character to warrant the additional protection provided by designation either in the Park or in the petition area outside the Park. I also find that there are no readily identifiable burial mounds or Native American artifacts in the Park or in the petition area outside the Park. If burial mounds or Native American artifacts were identified in the vicinity of a surface coal mining operation, there are a series of statutes and rules (Federal and State) that would provide special protections for their preservation.

f. Fragile and historic lands—Summary. In summary, I find that the Park is fragile land because of the existence of its important natural systems, its ecologic resources (threatened and endangered species and their habitats), its cultural values and its esthetic values. I find that Cane, Meadow, and Falls Creek watersheds, and the lower reaches of the Piney Creek watershed in the petition area outside the Park are also fragile lands because these streams of high water quality and water quantity are the primary water sources for the waters and water-formed features of the Park and its stream-dependent ecologic resources. I find that surface coal mining operations in the Park or these portions of the petition area outside the Park will affect these fragile lands.

I find that surface coal mining operations in the Park or these portions of the petition area outside the Park pose an unacceptable risk of causing significant damage to the important natural systems and cultural and esthetic values of the fragile lands in the Park and the petition area outside the Park. Although some risks may have low probabilities of occurring, if they did occur the impacts on these fragile lands could be significant and long-term.

I find that the water quality and quantity of the streams entering the Park from the Cane Creek, Meadow Creek, and Falls Creek watersheds collectively, have a significant influence on the



Park's natural systems, its ecologic resources, and its cultural and esthetic values. I find that the water quality and quantity in the Dry Fork watershed have no effect on the Park's surface resources except during high flow periods, because the water subsidizes underground prior to entering the Park and re-emerges north of the Park's boundaries.

I also find that surface coal mining operations in the Crane Creek, Meadow Creek, and Falls Creek watersheds, and the lower reaches of the Piney Creek watershed, could potentially impact the water quality and/or quantity of these streams which are essential to the continued existence of the unique waters and water-formed features of the Park, the natural values of the stream biota in the Park, the threatened and endangered species of the Park, and the esthetic values of the Park.

I find that the fragile lands of the Park would be a risk if an operator failed to mitigate unanticipated acid or toxic mine drainage from a surface coal mining operation within the Park or within one of these watersheds outside the Park, and then abandoned the site without an adequate performance bond to threat the acid or toxic mine drainage. Although this may be a relatively unlikely occurrence, due to the preventive and mitigative requirements of SMCRA, it is an unacceptable risk because of the potential impact that untreated acid or toxic mine drainage could have on the important natural systems of the petition area outside the Park and the important natural systems and esthetic and cultural values of the park. Park resources influenced by the Cane Creek, Meadow Creek, and Falls Creek watersheds and the lower reaches of the Piney Creek watershed, could potentially be damaged. The degree of damage would depend on the character, intensity, and duration of the untreated acid or toxic mine drainage.

In addition, the limited drill hole data available to OSM and the variability in the occurrence of acid/toxic-forming material in the watersheds increases the risk that a permitted surface coal mining operation might produce significant amounts of acid/toxic material. And even with state-of-the-art-predictive and preventive techniques, a permittee may misapply the mining operations or reclamation plan, and create AMD. That AMD could impact the important natural systems and cultural and esthetic values of the Park as referenced above.

#### *B. Primary Allegation No. 2—Renewable Resource Lands*

1. *Petition allegation*—The petition area should be designated unsuitable for

surface coal mining operations because mining the area would affect renewable resource lands in which the operations could result in a substantial loss or reduction in long-range productivity of water supply or of food or fiber products.

a. The petitioners allege that ground water in the petition area is unpredictable and that the inconsistent quality and quantity of ground water are natural hazards.

The intervenors allege that conducting surface coal mining operations in the petition area will not result in a substantial loss or reduction in long-range productivity of water supply. The intervenors also state that the ground water resources in the petition area are predictable and manageable. The intervenors state that a site-specific determination must be made on current information.

b. The petitioners allege that pollution from surface coal mining operations could make Cane Creek unpotable to hikers because contaminants entering the stream from surface coal mining operations would result in unacceptable degradation, making it potentially unusable as a drinking water supply.

The intervenors allege that the petitioners have not provided documentation which suggests or demonstrates that surface coal mining operations will result in a substantial loss or reduction of long-range productivity of water supply. The intervenors also allege that historical water quality from Cane Creek, based on USGS records, show that water quality has not been affected in the watershed despite significant previous surface coal mining operations.

c. The petitioners allege that the petition area is used for hunting, fishing, and farming, all of which could be adversely affected by changes in water quality or quantity due to surface coal mining operations. The petitioners also assert that the area is used by local residents for the gathering of berries, seeds for horticultural projects, etc., which could be adversely affected by surface coal mining operations.

The intervenors allege that surface coal mining operations in the petition area will not result in a substantial loss or reduction in long-range productivity of food or fiber products.

2. *Findings*—Renewable resource lands. I find that there are renewable resource lands in the petition area outside the Park. Also, I find that the record demonstrates that surface coal mining operations could affect renewable resource lands. However, for the following reasons, I find that the record does not demonstrate that surface

coal mining operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.

a. Food and fiber productivity. I find that there are lands in the petition area outside the Park that contribute significantly to the long-range productivity of food and fiber products. Therefore, I find that these lands are renewable resource lands. However, I find that the record does not demonstrate that water quality impacts of surface coal mining operations on these renewable resource lands would result in a substantial loss or reduction of long-range productivity of food or fiber products. I find that there have been significant impacts to water quality in Dry Fork and in Piney Creek as a result of pre-SMCRA mining activities. However, silvicultural property owners have stated that fiber production in this area has not been affected by any mining impacts to the water. Similarly, the record does not demonstrate that agriculture has been affected by the pre-SMCRA mining that occurred in the petition area. Both silviculture and agriculture in the petition area rely on precipitation as a water source, rather than ground or surface water. Therefore, there is little likelihood that production of food or fiber products would be significantly damaged by water quality impacts of surface coal mining operations.

b. Water supply productivity. I find that the record does not demonstrate that the petition area is renewable resource land because of ground water, as ground water in the petition area does not contribute significantly to the long-range productivity of water supply. Water supplies in the petition area are provided by public utilities with water sources outside the petition area. There are a few well users scattered throughout the petition area, but those well users would have access to public utility water in the event their wells no longer produced water acceptably. Likewise, hikers and campers occasionally use Cane Creek in the Park as a water source, but the incidental or occasional use of a stream as a water supply, does not demonstrate that the area contributes significantly to long-range productivity of the water supply.

#### *C. Primary Allegation No. 3—Natural Hazard Lands*

1. *Petition allegation*—The area should be designated unsuitable for surface coal mining operations because mining would affect natural hazard lands in which such operations could substantially endanger life and property.

The petitioners allege that mining can increase flooding. They allege that a greater than 100-year flood has occurred at Cane Creek in the petition area and that construction activities changed the flood-flow characteristics. They allege that these events demonstrate that the petition area is prone to flooding, and that mining could increase the danger to life, property, and the environment.

The intervenors allege that flooding is not a significant issue in the petition area. Skyline references the flood hazard mapping of Van Buren County prepared by the Department of Housing and Urban Development (HUD). Skyline emphasizes that HUD mapping does not show flood hazard areas along streams where surface coal mining operations would most likely occur in the petition area.

2. *Findings*—Natural hazard lands. I find that there are natural hazard lands in the petition area as evidenced by the flood prone areas shown in the flood hazard maps of HUD for the Cane Creek watershed. Also, I find that the record demonstrates that surface coal mining operations could affect natural hazard lands, as evidenced by the analysis in the PED/EIS that surface coal mining operations could cause a five percent increase in previously identified flood levels. However, I find that the record does not demonstrate that surface coal mining operations could substantially endanger life and property from flooding, for the following reasons. The HUD flood hazard maps and other available information do not indicate that any structures would be substantially endangered by flooding in the Cane Creek watershed during a 100-year event as a result of surface coal mining operations. All identified structures in the other watersheds are located significant distances from the respective creeks. The record does not indicate any other respect in which life and property on natural hazard lands could be substantially endangered by flooding because of surface coal mining operations.

#### *D. Primary Allegation No. 4—Incompatibility With Land Use Plans*

1. *Petition allegation*—The petition area should be designated unsuitable for surface coal mining operations because mining the area would be incompatible with existing State or local land use plans or programs.

a. The petitioners allege that the petition area forms the watershed of the Park. State regulations provide for the establishment of buffer areas to protect Natural Resource Areas, including Natural Areas. The Strategic Management Plan for the Park indicates

that State plans include the purchase of land both upstream and downstream of the Park “to provide adequate protection of Park resources and to give defensible boundaries.” Petitioners allege that allowing mining in the watershed would directly under-cut the ability of the State to create or maintain a buffer area or to make decisions about appropriate activities or land for Park protection.

The intervenors allege that SMCRA requirements, including the 300 foot buffer zone [under Section 522(e)(5)] around the Park, provide adequate protection to the special features in the Park. The intervenors further state that under the Park’s original land acquisition agreement, sufficient land acreage was incorporated to provide a natural, built-in “buffering” capacity for its scenic landscape and waterfalls. The intervenors conclude that the combined acreage of the Park’s natural “buffer” and the 300 foot buffer zone prohibition to mining around the Park’s entire boundary is sufficient to ensure protection of its natural resources. Therefore, mining in the watershed would not directly undercut the State’s ability to create or maintain a buffer area.

b. The Petitioners allege that coal truck traffic would affect tourist traffic to the Park.

The intervenors allege that the petitioners provide no proof that coal trucks cause damage to the roads and thus constitute a conflict with land use plans. The intervenors further allege that coal haulage offers an opportunity for jobs which fits into the land use plan and that taxes (local, State, and Federal) provide important resources for maintenance of the road systems in the land use plans of the petition area.

c. The Petitioners allege that mining would affect the Trail of Tears National Historic Trail.

The intervenors allege that the presence of the Trail of Tears within the petition area does not qualify the area as fragile lands because: (1) The location of the Trail of Tears comprises an extremely small portion, less than 3 percent of the petition area, and is located in the southern portion of the area; and (2) the Trail of Tears does not meet the definition of fragile land because a majority of the Trail parallels or overlies existing roadways in the petition area.

d. The petitioners allege that the Park is a prime tourist attraction in the State of Tennessee and that the State has made significant investments in the Park to construct facilities to make Fall Creek a resort park.

The intervenors allege that the petitioners’ assertion that mining in the area could damage the Park’s attractiveness and economic viability is merely an opinion and is not supported by facts. Therefore, there is no support for the allegation that mining is incompatible with existing State or local land use plans or programs.

e. The Petitioners allege that feature-length films have been made in and out of the petition area, and that mining would cause this industry not to return.

The intervenors made no response to this allegation.

2. *Findings*—Incompatibility with land use plans. I find that surface coal mining operations in the Park or in certain portions of the petition area outside the Park would be incompatible with State or local land use plans and programs, for the following reasons.

The existing land use plans and programs do not call for surface coal mining operations in the Park. The impacts of fugitive dust and noise from surface coal mining operations in or near the Park on the recreational values of the Park would impair the recreational use of Park land. The visual impacts of surface coal mining operations in the Park or in certain parts of the petition area near the Park could have a negative impact on Park visitation, thus affecting the economic viability of the Park and the surrounding area. The natural systems, ecologic resources, cultural resources, and esthetic values of the park could be moderately to significantly impacted by surface coal mining operations in the Park and in the petition area outside the Park as described in the mining scenarios in Chapter V of the PED/EIS.

These impacts would be in direct conflict with the mission of Fall Creek Falls State Park: To preserve and protect the Park and Natural Area’s unique resources—most importantly its water and water-formed features, and to provide visitors with well managed and maintained stay use and day use facilities. This mission is the basis for the Park’s current land use plans and programs. In order to enhance these programs, the State has invested significant amounts of State funds in the Park to preserve its natural resources and to make it more attractive to Park visitors. In turn, the Park has generated revenue for the State and the surrounding counties because of its high visitation rates and its attractiveness as a feature film location.

However, for the reasons given below, I find that the record does not support the following allegations raised by the petitioners with respect to incompatibility of surface coal mining

operations with State or local land use plans or programs: (1) Mining of the area would undercut the ability of the State to maintain a buffer zone around the Park. [I find the State has been successful in acquiring additional lands around the Park to enhance its protection of the Park resources, although the petition area outside the Park has been significantly affected by various land uses such as agriculture, silviculture and, to a limited degree, by mining. There has been no mining in the petition area outside the Park since 1984]. (2) Coal trucks damaging roads is inconsistent with land use plans. [I find that there is or can be sufficient road maintenance by the State and local government to address impacts on roads from coal trucks in surface coal mining operations.] (3) Mining near the Trail of Tears is inconsistent with land use plans. [I find that since there are no certified segments of the Trail of Tears in the petition area, mining near the Trail of Tears would not be inconsistent with local land use plans or programs.]

Similarly, surface coal mining operations in the Dry Fork watershed would not be incompatible with the existing land use plans or programs for the Park. The largest block of coal reserves in Dry Fork is located in the headwater areas of the watershed. This part of the watershed is adjacent to the northern portion of the Park where visitation is prohibited. Any surface coal mining operations in this area would be outside the viewshed of Park visitors and would go undetected by tourists entering and leaving the Park because of its distance from either the northern or southern entrances of the Park. Therefore, because of the lack of demonstrated likely significant damage to Park natural systems and esthetic and cultural values, or impact on Park visitation, the record does not demonstrate that surface coal mining operations in this watershed would be incompatible with existing State or local land use plans or programs.

#### *E. Primary Allegations No. 5—Feasibility of Reclamation*

1. *Petition allegation*—The petition area must be designated unsuitable for surface coal mining operations because reclamation is not technologically and economically feasible.

a. The petitioners allege that reclamation of the petition area is not technologically and economically feasible because mining the Sewanee coal seam consistently leads to acid and toxic drainage despite the efforts of OSM and the most diligent mining companies to avoid such degradation.

The intervenors allege that the Sewanee coal seam in and of itself is not toxic. They contend that the coal seam and its related overburden has variable acid-producing potential and that potential does not automatically equate to toxicity. They further contend that such materials only become acid-producing under prolonged exposure to atmospheric oxidizing conditions and other processes. They further allege that mining at the Skyline Coal Company site has demonstrated that the Sewanee coal seam and its overburden materials can be handled properly to avoid or significantly minimize the production of undesired acid conditions. They also contend that the violation history provided by the petitioners misrepresents the facts and is often inaccurate.

b. The petitioners allege that the methods used by the coal industry and OSM do not accurately predict acid or toxic mine drainage, and that there is no foolproof method for handling acid-forming materials. Therefore, the petitioners allege that any mining in the watershed would place the streams in the Park at risk of acid mine drainage and would conflict with OSM regulations and objectives to prevent such occurrences.

The intervenors allege that reclamation associated with the mining of the Sewanee coal seam is technologically and economically feasible as demonstrated by the operations at its Big Brush Creek Mine. Skyline states that the company has been successful in mining the Sewanee coal seam without creating toxic mine drainage as alleged by the petitioners. The lack of an adequate technological understanding of the geochemical make-up of the overburden associated with the Sewanee coal seam and the subsequent deficit of technological know-how in the proper handling of the spoil material had led to past mining operations causing undesirable acid mine drainage. Intervenors assert that this is not the case with more recent technological breakthroughs and experiences gained in working with the coal seam. With improved acid-base accounting techniques that take into account siderite-masking, the acid-producing potential of the overburden can be properly characterized in advance of mining. Skyline asserts that, with an accurate acid-base bank, the combination of mining and reclamation technologies has been implemented by Skyline at its Big Brush Creek Mine to avoid and/or significantly minimize the generation of acidic conditions. Skyline further states that the company has successfully mined and reclaimed the

disturbed areas economically and at a profit.

c. The petitioners allege that reclamation is not technologically and economically feasible within the petition area because even fully regulated mining results in unavoidable impacts.

The intervenors allege that these types of risks and events pose minimal risks to the Fall Creek Falls State Park. They reference storm events well over the 10-year, 24-hour interval which have occurred within the petition area without having unalterable, long-term impacts to the Park.

They also contend that the environmental protection performance standards can and will provide the necessary protection for the Park and the petition area.

2. *Findings—Feasibility of reclamation.* I find that the record does not clearly demonstrate that reclamation of surface coal mining operations in the petition area is technologically and economically infeasible, as required for designation under the mandatory criterion. I find that the presence of the Sewanee coal seam in the petition area does not clearly demonstrate that reclamation is technologically and economically infeasible. Although the Sewanee coal seam may contain acid- and toxic-forming materials, I find that this does not support a determination that reclamation of those surface coal mining operations involving coal extraction from the Sewanee coal seam is infeasible. The history of mining in the southern coal fields where the Sewanee coal seam dominates demonstrates that the majority of sites have been successfully reclaimed. Only 8 permits out of 205 permits issued since 1977 when SMCRA was enacted are confirmed AMD producers. Four of these permits were issued between 1977 and 1982 when minimal environmental controls were in place. The remaining 4 were issued between 1984 and 1992, when Tennessee and other states were developing ways to enhance their predictive techniques in order to accurately identify potential AMD producers. Since 1992, enhanced methodologies have been utilized on most permits. These predictive and preventive methodologies continue to evolve and improve. However, uncertainties exist with some of the more recent permits where water quality problems have developed. Several more years of experience will be required to determine the overall success of the newer methodologies for AMD prediction and prevention that were incorporated into these permits, because the success or failure of these newer

methodologies cannot be verified until these sites are in reclamation. Nonetheless, I have determined that the record does not clearly demonstrate that reclamation is technologically or economically infeasible, as required for designation under the mandatory criterion.

However, as discussed above, the record does demonstrate that surface coal mining operations would pose an unacceptable risk to the fragile lands of the Park, and that such risks are incompatible with Park land use plans and programs. Because the adverse impacts could be significant, the risk to the Park is unacceptable.

## VII. Decision on Petition—Designation

### A. Areas Designated and Basis for Designation

I am designating the Park and the Cane Creek, Meadow Creek, and Falls Creek watersheds as unsuitable for surface coal mining operations, including surface activities in connection with underground mining operations. I am designating the Piney Creek watershed unsuitable for surface coal mining operations, subject to a proviso that remining may be permitted in the upper reaches, as described below. The selection of the preferred alternative assures that all reasonable and practical means to avoid or minimize environmental harm have been adopted.

I have determined that designation is appropriate under the following discretionary criteria.

- That surface coal mining operations would affect *fragile lands* in which the operations could result in significant damage to important esthetic values and natural systems in accordance with SMCRA Section 522(a)(3)(B); and
- That surface coal mining operations would be *incompatible* with existing Park land use plans or programs in accordance with SMCRA Section 522(a)(3)(A).

In summary, my decision to designate portions of the petition areas as unsuitable for mining operations is based on (1) the inherent risks of surface coal mining operations to fragile lands and (2) the uncertainties associated with predicting and preventing impacts of surface coal mining operations in such a large area as that of the petition area. These risks and uncertainties could result in significant adverse and irreversible impacts to the Park's esthetic and cultural values, its natural systems, and its ecologic resources, and with both its short-term and long-term land use plans and programs.

I have determined that, if surface coal mining operations were to occur on these lands, such operations would pose a significant and unacceptable risk to the unique ecological resources, esthetic and cultural values, and natural systems of Tennessee's most prestigious park and to the natural systems of the Cane Creek, Falls Creek, Meadow Creek, and lower reaches of the Piney Creek watersheds. I have also determined that such risks and uncertainties are incompatible with the Park's land use plans and programs.

These decisions are based on consideration of the PED/EIS, and of the entire administrative record before me [including all comments received during the period prescribed by regulation before a decision can be made on the final PED/EIS]. That information includes the petition; the draft and final petition evaluation documents/environmental impact statements (PED/EIS); information provided by the petitioners; comments in the form of oral testimony at the public hearing; and written submissions received during the public comment periods which ended April 29, 1999, and the prescribed wait period which ended on May 3, 2000, from Federal agencies, State agencies, local agencies, and members of the public and industry. The public record also includes information from meetings with the petitioners, land owners, lease holders, and intervenors, and comments received during the prescribed period after publication of the final PED/EIS.

1. *Designation of Park.* In the event that the State, as the mineral owner of lands within the Fall Creek Falls State Park successfully asserted valid existing rights (VER) in accordance with 30 CFR 761.11, the State would be able to engage in surface coal mining operations and SMCRA Section 522(e), regarding protection of publicly owned parks would not prohibit these operations. Therefore, I am exercising my discretion to designate Fall Creek Falls State Park as unsuitable for mining in accordance with 30 CFR 762.11(b)(1) and (b)(2) along with Cane Creek, Falls Creek and Meadow Creek watersheds. Although the State has indicated that it has no intent to mine the Park coal reserves, such a statement is not legally binding. And theoretically, there may be circumstances in which the prohibitions of Section 522(e) would not protect all Park lands. Thus, in the event that VER was demonstrated for surface coal mining operations on Park lands, the State would be able to engage in surface coal mining operations, and SMCRA Section 522(e), regarding protection of publicly owned parks, would not

prohibit these operations. I also recognize that it may be theoretically possible that some portion of the Park's boundaries could be modified so as to remove areas from the Park. The conveyance from the United States to Tennessee of the core area of the Park required that the conveyed lands be used exclusively for public park, recreational and conservation purposes. The United States retained a revisionary interest if the State failed to comply with this limitation for more than 3 years. The Department has never addressed whether allowing coal mining on the conveyed lands would violate this condition. Because it might be possible that surface coal mining operations or some aspect of surface coal mining operations could be allowed, or that the mining could be completed in 3 years or less, I am exercising my discretion to designate the Fall Creek Falls State Park as unsuitable for surface coal mining operations.

2. *Designation of Piney Creek watershed allowing remining of upper reaches.* I am designating the upper portions of the Piney Creek watershed unsuitable for surface coal mining operations; *provided, that* a surface coal mining operation may be permitted if a portion of the operation includes previously mined areas and the permit applicant demonstrates that water quality in receiving streams will not be degraded. I have determined that, because of where it enters the Park, Piney Creek has limited influence on the continued preservation of the Park's resources. However, Piney Creek does influence the esthetic values associated with Piney Falls within the Park and does contribute to some degree, to the continued existence of the unique natural values of the Park. Therefore, for the reasons outlined above, designation is appropriate. However, I believe permitting remining in the upper reaches of this watershed can be appropriate, for the following reasons.

Although there are inherent and unavoidable impacts as well as unanticipated events that may occur during surface coal mining and reclamation operations, I have determined that potential remining of the headwaters of the Piney Creek watershed, which would include the reclamation of pre-SMCRA mined lands, could provide benefits that outweigh the risks.

Most of the upper portions of the Piney Creek watershed contain pre-SMCRA abandoned mine sites. Allowing surface coal mining operations only in those areas in which the water quality could improve as a result of

remining operations would potentially benefit the Park as a fragile land. Due to the distance of any potential surface coal mining operations from the Park borders or the Park entrances, there would be no incompatibility with State or local land use plans or programs if remining operations were allowed in the headwaters of the Piney Creek watershed.

The water quality in these headwater reaches has been significantly impacted by the pre-SMCRA mining. Currently, Piney Creek proper and other headwater tributaries flow through pre-SMCRA mine pits and are impacted by acid mine drainage and by increased concentrations of total dissolved solids which result in mineralization to the waters of the receiving stream. Thus, remining of these abandoned mine lands has the potential to improve water quality and therefore, have a beneficial effect on resources both within and outside the Park. The remining could reclaim the pre-SMCRA mine pits and reconstruct the headwater streams, including riparian habitat. Also, the previously mined and unreclaimed land would be returned to a productive use.

By allowing only remining of previously mined areas in the upper reaches of the Piney Creek watershed, I am minimizing any risk to Park resources. Water quality improves in the lower reaches of Piney Creek as it enters the Park, and should not be compromised by the possibility of a mining failure in the lower reaches. Such failure could potentially impact the Park's natural systems and cultural and esthetic values, and be incompatible with the Park's land use plans and programs.

#### *B. Area Not Designated—Dry Fork Watershed*

I am not designating the Dry Fork watershed as unsuitable for surface coal mining operations. I am not designating any lands within the Dry Fork watershed as unsuitable for surface coal mining operations for the following reasons. Dry Fork watershed does not contain the natural, ecologic, scientific or esthetic resources that would make it a fragile land in accordance with 30 CFR 762.5. It is not a valuable habitat for fish or wildlife or for threatened and endangered species of animals or plants as demonstrated by the few documented occurrences within the watershed. Surface coal mining operations conducted in Dry Fork watershed would not affect fragile lands or be incompatible with existing State or local land use plans or programs.

#### *C. Other Criteria*

For the reasons discussed above, I have decided that the record does not demonstrate that designation is appropriate for any part or all of the petition area under the criteria of SMCRA Section 522(a)(2) or (3)(C)(D).

#### **VII. Effects of Decision and Future Action**

In accordance with 30 CFR 736.15, OSM is responsible for approving or denying applications for proposed surface coal mining operations in Tennessee, including the Fall Creek Falls petition area. In accordance with these regulations, OSM also administers and maintains an enforcement program to assure compliance with SMCRA laws, regulations, policies, and procedures. Thus, OSM's permitting and enforcement programs mitigate any environmental impacts that might be associated with the selection of the preferred alternative. OSM would also require compliance with the restrictions placed on surface coal mining operations in the headwaters of the Piney Creek watershed and would preclude surface coal mining operations in those portions of the petition area designated as unsuitable for surface coal mining operations.

Under this decision, OSM would not accept and process applications for proposed surface coal mining operations in the Park, in the Cane Creek, Meadow Creek and Falls Creek watersheds, and in the lower reaches of Piney Creek watershed within the Fall Creek Falls petition area outside the Park, except as provided in SMCRA Section 522(a)(6). That provision states that:

The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

Concerning the upper reaches of the Piney Creek watershed within the Fall Creek Falls petition area, OSM would accept and process applications for proposed surface coal mining operations where the proposed mining plan includes areas disturbed by pre-SMCRA coal mining, and the applicant demonstrates that water quality in the receiving streams will not be degraded, and that impacts from the previous mining will be mitigated by the proposed surface coal mining operation. All other surface coal mining operations would be prohibited.

OSM's December 17, 1999, final rule on the applicability of Section 522(e) of

SMCRA to subsidence concluded that SMCRA's definition of "surface coal mining operations" at Section 701(28) does not apply to subsidence. The rulemaking preamble discusses OSM's conclusions as to why the definition includes surface activities in connection with a surface coal mine; and surface activities in connection with surface operations and surface impacts incident to an underground mine; and areas affected by such activities. In brief, under this interpretation subsidence is not a surface activity in connection with an underground mine and is not an area affected by such surface activity, and therefore, is not a surface coal mining operation subject to the prohibitions of Section 522(e). OSM expects to act consistent with this interpretation in determining which aspects of an underground coal mine are prohibited under Section 522 as surface coal mining operations.

Consistent with this interpretation, I anticipate that OSM will interpret the definition of surface coal mining operations at SMCRA Section 701(28) to mean: Surface activities in connection with a surface coal mine and surface activities in connection with surface operations and surface impacts incident to an underground coal mine, and areas affected by such surface activities. Under this interpretation, designation would prohibit only surface activities and areas affected by surface activities as discussed above. Because subsidence is not a surface activity, and is not an area affected by such surface activity, subsidence would not be considered a "surface coal mining operation." Thus, subsidence and other aspects of underground coal mining that are not surface activities or areas affected by surface activities would not be prohibited on any land designated unsuitable for surface coal mining operations pursuant to this petition.

OSM would accept and process applications for surface coal mining operations in the Dry Fork watershed of the Fall Creek Falls petition area outside the Park in accordance with OSM's conclusion that this watershed has no effect on the Park's surface resources.

A petitioner may seek termination of this designation with respect to Cane Creek, Falls Creek, Meadow Creek and Piney Creek watersheds, by providing new allegations of fact that support such a termination.

#### **IX. Notification**

Pursuant to 30 CFR 942.764.19 and 40 CFR 1506.6, this "Record of Decision and Statement of Reasons" is being sent simultaneously by certified mail to the petitioners and intervenors and by

regular mail to every other party to the petition process, including affected Indian tribe(s), Federal and State agencies, commenters who submitted substantive comments, and all others who have requested it. Notification of the availability of the document will be published in four local or regional newspapers, the Tennessee Administrative Record, and the **Federal Register**, and will be sent by regular mail to landowners in the petition area and to commenters who submitted general comments. The document will also be placed on OSM's web page. My decision becomes final upon the date of signing this statement. Any appeal from this decision must be filed within 60 days from this date in the United States District Court for the Eastern District of Tennessee, as required by Section 526(a)(1) of SMCRA.

Dated: June 17, 2000.

Bruce Babbitt,

*Secretary of the Interior.*

[FR Doc. 00-15898 Filed 6-22-00; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Agency Information Collection Activities: New Collection, Comment Request

**ACTION:** Notice of Information Collection Under Review; New Collection: Electronic Access Survey.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from the OMB by June 21, 2000. If granted, this emergency approval is only valid for 180 days. Comments should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period a regular review of this collection is also being undertaken. Public comments are encouraged and will be accepted until August 22, 2000. Written comment and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Penny Alfred, Program Analyst, Federal Bureau of Investigation, CJIS Division, Module A-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625-7387.

Overview of this information collection:

- (1) *Type of Information Collection:* New data collection.
- (2) *Title of the Form:* Electronic Access Survey.
- (3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.
- (4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit (Federally licensed firearms dealers, manufacturers, or importers). *Brief Abstract:* The Brady Handgun Violence Prevention Act of 1994, requires the Attorney General to establish a national instant criminal background check system that any Federal Firearm Licensee may contact, by telephone or by the electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate federal or state law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 38,250 Federal Firearms

Licensee at an average of 3 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 637.50 burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1001 G Street NW, Suite 850, Washington, DC 20530.

Dated: June 19, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00-15887 Filed 6-22-00; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF JUSTICE

### Bureau of Justice Assistance

[OJP(BJA)-1284]

#### Program Announcement for Financial Crime-Free Communities Support (C-FIC) Anti-Money Laundering Grant Program

**AGENCY:** Office of Justice Programs, Bureau of Justice Assistance, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** The U.S. Department of the Treasury and the U.S. Department of Justice are requesting applications for the Financial Crime-Free Communities Support (C-FIC) Anti-Money Laundering Grant Program.

**DATES:** Applications must be received by 5 p.m. ET on Monday, July 24, 2000.

**ADDRESSES:** Interested applicants must obtain an application kit from BJA's Web site at [www.ojp.usdoj.gov/BJA/html/new1.htm](http://www.ojp.usdoj.gov/BJA/html/new1.htm) or at [www.ncjrs.org/fedgrant.htm#mlgrant](http://www.ncjrs.org/fedgrant.htm#mlgrant). The application kit is also available from the Bureau of Justice Assistance Clearinghouse at 1-800-688-4252 or the DOJ Response Center at 1-800-421-6770. (See "Format" and "Delivery Instructions" later in this announcement for instructions on required standards and the address to which applications must be sent.)

**FOR FURTHER INFORMATION CONTACT:** Charles M. (Bud) Hollis, Senior Program Advisor, Bureau of Justice Assistance, 202-616-3218. [This is not a toll-free number.]

#### SUPPLEMENTARY INFORMATION:

##### Purpose

The purpose of this program is to provide state/local grant assistance to