

**Supporting Statement A**  
**30 CFR Part 761—Areas Designated by Act of Congress**

**OMB Control Number 1029-0111**

**Terms of clearance: None**

**General Instructions**

*A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked “Yes,” then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.*

**Specific Instructions**

**Justification**

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.*
2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.*
3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.*
4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*
5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*
7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
  - \* requiring respondents to report information to the agency more often than quarterly;*
  - \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
  - \* requiring respondents to submit more than an original and two copies of any document;*
  - \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*
  - \* in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
  - \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
  - \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
  - \* requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*
8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

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

*Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.*
9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*
11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*
12. *Provide estimates of the hour burden of the collection of information. The statement should:*
  - \* *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
  - \* *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.*
  - \* *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.*
13. *Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)*
  - \* *The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.*
  - \* *If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use*

*existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*

*\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.*
15. *Explain the reasons for any program changes or adjustments in hour or cost burden.*
16. *For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*
17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*
18. *Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

## Introduction

We, the Office of Surface Mining Reclamation and Enforcement (OSM), are submitting this information collection clearance package to renew our authority to collect information and require recordkeeping under 30 CFR Part 761, Areas Designated by Act of Congress. The Office of Management and Budget (OMB) previously reviewed and approved the collection of information and recordkeeping requirements under this part, assigning control number 1029-0111 to that burden.

The regulations at 30 CFR Part 761 implement section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1272(e), which prohibits or restricts surface coal mining operations on certain lands unless the operation was in existence on August 3, 1977, or unless the person planning the operation has valid existing rights (VER) or obtains a waiver. The regulations in 30 CFR Part 761 define the circumstances and establish procedures under which a person can obtain an exception or waiver from the prohibitions and restrictions of section 522(e) of the Act.

OMB previously approved 531 burden hours for 30 CFR Part 761. Those hours reflected the information collection burden associated with the submission and processing of requests for VER determinations, compatibility findings for operations that would be located on federal lands in national forests, and waivers for operations that would be located within 100 feet of a public road or within 300 feet of an occupied dwelling. They also included the burden associated with permit application processing requirements for operations that would adversely impact publicly owned parks or historic sites or in situations in which the regulatory authority could not determine whether the proposed operation would be located on any lands protected under 30 CFR 761.11.

We are now requesting 880 hours, a increase of 349 hours. Four of those hours reflect an increase in the unit time required to prepare a request for a compatibility finding under 30 CFR 761.13, 147 hours reflect a 1-hour increase (for the public notice) in the unit time required for public road waivers under 30 CFR 761.14(c), and the remaining increase in burden hours reflects an increase in use.

The responses to some items in the instructions for the supporting statement are identical for each section; those responses appear on pages 7-9 of this document. Except as otherwise noted in the supporting statements for individual sections, the respondents and potential respondents consist of the 24 state regulatory authorities and persons who desire to mine coal on lands on which surface coal mining operations are otherwise prohibited under section 522(e) of SMCRA.

The following table summarizes the information collection and recordkeeping requirements and changes to the current collection burden for 30 CFR Part 761.

Summary of Annual Burden to Respondents for 30 CFR Part 761

Section	Number of Industry Responses	Number of State Responses	Hours per Industry Response	Hours per State Response	Total Hours Requested	Hours Currently Approved	Difference
761.13	1	0	10	0	10	6	4
761.14(c)	0	147	0	2	294	124	170
761.16	22	22	7	19	572	397	175
761.17	0	2	0	2	4	4	0
<b>TOTALS</b>	<b>23</b>	<b>171</b>	<b>17</b>	<b>23</b>	<b>880</b>	<b>531</b>	<b>349</b>

Summary of Costs for 30 CFR Part 761

Section	Total Respondent Non-Wage Costs (\$)	Total Federal Wage Costs (\$)
761.13	120	3,360
761.14(c)	0	2,352
761.16	3,300	9,804
761.17	0	1,344
<b>TOTALS</b>	<b>3,420</b>	<b>16,860</b>

***Items with Identical Responses in all Supporting Statements for 30 CFR Part 761***

Justification

3. We encourage, but do not require, the use of electronic information collection and submission techniques whenever appropriate and feasible. We provide training, software, and technical assistance to states to promote the use of electronic information technology systems.
4. The information collection requirements of 30 CFR Part 761 do not duplicate information collection requirements under other laws and regulations. OSM is the primary federal agency charged with implementation of section 522(e) of SMCRA. As required by SMCRA, our rules are structured to maximize coordination with other agencies and minimize duplication.
5. There are no special provisions for small businesses or other small entities. Special provisions are not appropriate because the requested information is the minimum needed to ensure that surface coal mining operations do not occur in areas in which they are prohibited or to document that all necessary waivers have been obtained with the appropriate degree of opportunity for public participation.
6. Failure to collect the information requested for 30 CFR Part 761 would impair the ability of SMCRA regulatory authorities to ensure that surface coal mining operations on the lands listed in section 522(e) of the Act are conducted only under the circumstances set forth in the Act. Furthermore, the Act specifically requires some of the requested information.
7. This collection of information conforms with the guidelines in 5 CFR 1320.5(d)(2); i.e., 30 CFR Part 761 does not require that collection of information be conducted in a manner that—
  - ✓ requires respondents to report information to the agency more often than quarterly;
  - ✓ requires respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
  - ✓ requires respondents to submit more than an original and two copies of any document;
  - ✓ requires respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
  - ✓ in connection with a statistical survey, is not designed to produce valid and reliable results that can be generalized to the universe of study;

- ✓ requires the use of a statistical data classification that has not been reviewed and approved by OMB;
  - ✓ includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
  - ✓ requires respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.
8. We contacted one state regulatory authority and two mining consulting firms that prepare mining permit applications. We supplied a concise description of the type of information collection burden imposed by 30 CFR Part 761, the currently approved burden, and proposed wage and nonwage burden estimates, along with a request for input on the associated information collection requirements and any other comments they wished to make regarding the clarity of the rules and potential burden.

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Burden estimates for the sections discussed below are based on the responses that we received from these individuals and our experience as the regulatory authority in Tennessee and on Indian lands. No person contacted expressed concerns with the

availability of data, frequency of collection, clarity of instructions, or data elements reported.

On October 28, 2011, OSM published in the Federal Register (76 FR 66962) a notice requesting comments from the public regarding the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the burden on respondents. This notice gave the public 60 days in which to comment. However, no comments were received.

9. Not applicable. We provide no payments or gifts to respondents.
10. Sections 507(b)(17), 508(a)(12), and 508(b) of SMCRA require that certain types of permit application information be kept confidential when the permit applicant so requests. The Archeological Resources Protection Act of 1979, 16 U.S.C. 470, requires that information on the nature and location of archeological resources on public lands and Indian lands be kept confidential. These provisions apply to requests for VER determinations under 30 CFR 761.16.
11. Not applicable. There are no questions of a sensitive nature.
12. OSM uses the U.S. Department of Labor's Bureau of Labor Statistics (BLS) figures for calculating cost burden placed on respondents and on the Federal government. These figures are derived for mining companies found at [http://www.bls.gov/oes/current/naics4\\_212100.htm](http://www.bls.gov/oes/current/naics4_212100.htm) and for state government engineers found at [http://www.bls.gov/oes/current/naics4\\_999200.htm#b17-0000](http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000). We have also included a benefits factor of 1.4 for the coal companies, and a benefits factor of 1.5 for state government employees. These benefit estimates were developed in accordance with the BLS news release USDL-11-1718, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION - SEPTEMBER 2011 (<http://www.bls.gov/news.release/pdf/ecec.pdf>).
14. OSM has calculated our employee costs using Federal employee pay tables from the Office of Personnel Management's website at [http://www.opm.gov/oca/12tables/html/RUS\\_h.asp](http://www.opm.gov/oca/12tables/html/RUS_h.asp). We have included a 1.5 multiplier for benefits as discussed in the BLS news release USDL-11-1718.
16. Not applicable. We have no plans to publish the information collected.
17. Not applicable. We are not seeking a waiver from the requirement to display the expiration date of the OMB approval of the information collection.
18. There is no exception to the "Certification for Paperwork Reduction Act Submissions."

## 30 CFR 761.13 – Procedures for Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests

### Justification

1. Section 522(e) of SMCRA prohibits or restricts surface coal mining operations on certain lands unless the operation was in existence on the date of enactment of SMCRA (August 3, 1977) or unless a person has valid existing rights to conduct such operations. Protected lands include units of the National Park System, wildlife refuges, wilderness areas, historic sites, federal lands in national forests, and buffer zones for public roads, public parks, public buildings, occupied dwellings, and cemeteries.

Section 522(e)(2) of SMCRA provides that a person may conduct surface coal mining operations on federal lands within national forests if (1) the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values which may be incompatible with the proposed operations, and (2) the proposed surface operations and impacts are either incident to an underground coal mine or located on lands without significant forest cover. To implement this provision, 30 CFR 761.13 requires that a person planning such operations first submit a request to OSM to make the necessary findings. If the request is submitted in advance of and separate from a permit application, the rule specifies that the request must include a map and sufficient information about the proposed operation for the Secretary to evaluate the request and make adequately documented findings.

Section 201(c)(2) of SMCRA, which provides that the Secretary shall promulgate such regulations as are necessary to carry out the purposes and provisions of the Act, authorizes collection of the information required by 30 CFR 761.13. Collection of this information is necessary to properly implement the provisions of section 522(e)(2) of the Act that allow surface coal mining operations on federal lands in national forests in certain situations even in the absence of valid existing rights or an existing operation.

2. SMCRA regulatory authorities use the information collected under 30 CFR 761.13 to ensure that persons who conduct or intend to conduct surface coal mining operations on federal lands in national forests under the compatibility finding provision of section 522(e)(2) of the Act meet the statutory criteria for that exception from the prohibition on conducting surface coal mining operations on those lands.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.

7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.
12. Estimated Information Collection Burden

- a. Burden Hour Estimates for Respondents

Historically, most requests for compatibility findings have taken the form of a permit application. We receive no more than one request per year for a separate compatibility finding. We estimate that each person submitting a request will need an average of 10 hours to compile the necessary information and prepare the request. Accordingly, the total annual information collection burden for respondents for §761.13 is estimated to be **10 hours** (1 request x 10 hours per request).

- b. Estimated Annual Wage Cost to Respondents

We estimate the following annual wage costs are required to complete the collection for this section:

<b>Industry Wage Cost</b>			
<b>Position</b>	<b>Hour Burden per Response</b>	<b>Cost per Hour (\$) (including benefits)</b>	<b>Total Wage Burden (\$) (rounded)</b>
Clerical	2	22.69	45
Environmental Engineer	8	57.44	460
Total	10		505

Therefore, the estimated total annual wage cost for industry respondents for §761.13 is **\$505** (\$505 per request x 1 request per year).

(See list of items with identical responses for item 12 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

13. Total Annual Non-Wage Cost Burden to Respondents
  - a. Annualized Capital and Start-Up Costs

The information collection requirements of §761.13 do not involve any capital or start-up costs apart from expenditures associated with customary business practices.

b. Operation and Maintenance Costs

Based on consultation with the individual listed in item 8, we estimate non-wage operation and maintenance costs to the industry for compliance with the information collection requirements of §761.13 at \$120 per request, for a total annual cost of **\$120** (1 request per year x \$120 per request). These costs consist primarily of fuel and equipment maintenance expenses for travel to the courthouse and potential minesite, as well as certain analytical and mapping costs.

14. Estimate of Annualized Cost to the Federal Government

We estimate that each request for a compatibility finding requires an average of 60 hours to process, counting both OSM and Forest Service review times. At an average wage rate of \$56 per hour (rounded and including a 1.5 multiplier for benefits) for a GS 12/5 regulatory program specialist/physical scientist, the annual cost to the Federal government to process this request is **\$3,360**.

(See list of items with identical responses for item 14 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

15. The previously approved information collection authority for §761.13 included 6 hours for this activity. We are now requesting 10 hours for this section based on the most recent requests.

6 hours currently approved by OMB  
+ 4 hours due to an adjustment  

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10 hours requested

This request also request \$120 as a non-wage burden.

16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.

**30 CFR 761.14 - Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road**

Justification

1. Section 522(e) of SMCRA prohibits or restricts surface coal mining operations on certain lands unless the operation was in existence on the date of enactment of SMCRA (August 3, 1977) or unless a person has valid existing rights to conduct such operations. Protected lands include units of the National Park System, wildlife refuges, wilderness areas, historic sites, Federal lands in national forests, and buffer zones for public roads, public parks, public buildings, occupied dwellings, and cemeteries.

Section 761.14(b) implements section 522(e)(4) of the Act which provides that the regulatory authority may permit public roads to be relocated to facilitate surface coal mining operations, or may allow such operations within 100 feet of the outside right-of-way line of a public road, if, after public notice and opportunity for public hearing, a written finding is made that the interests of the public and affected landowners will be protected.

Under §761.14(b), the applicant must obtain the necessary approvals from the agency with jurisdiction over the public road. In addition, under §761.14(c)(1) and (2), the SRA must provide a public comment period and opportunity for a public hearing and, if a hearing is requested, publish advance notice of the hearing in a newspaper. Finally, §761.14(c)(3) requires the regulatory authority to make the written finding specified in the Act.

Section 201(c)(2) of SMCRA, which provides that the Secretary shall promulgate such regulations as are necessary to carry out the purposes and provisions of the Act, authorizes collection of the information required by §761.14 that is not expressly required under section 522(e) of the Act. Collection of this information is necessary to properly implement the waiver provisions of section 522(e)(4) of the Act.

2. OSM and state regulatory authorities use the information collected under §761.14 to ensure that persons who conduct or intend to conduct surface coal mining operations on the lands listed in section 522(e)(4) of the Act meet the statutory criteria for waivers from the prohibition on conducting operations in these areas. Members of the public use the public notice required by §761.14 to gain knowledge of, and provide input to OSM or the state regulatory authority on proposals to conduct surface coal mining operations on the lands listed in section 522(e)(4) of the Act.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.

6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.
12. Estimated Information Collection Burden

- a. Burden Hour Estimates for Respondents

The requirement for permit applicants to prepare and submit requests for public road buffer zone waivers under §761.14 appears in §778.16(c), and the burden of compliance with this requirement is included in the information collection burden for that section. However, §778.16(c) does not include the public notice and written finding requirements placed upon the regulatory authority by §761.14(c).

The number of waivers requested can vary widely. Based upon data provided by individuals listed in item 8 and our experience as a regulatory authority, we estimate that one-third of all applications for new permits or permit revisions adding acreage will include a request for a waiver of this nature.

The state-specific annual evaluation reports for the 2011 evaluation year indicate that we and the 24 state regulatory authorities issued 447 new permits or permit revisions adding acreage in that year. All but 2 of those permits and revisions were issued in primacy states. Because the level of mining varies greatly from state to state, the level of permitting activity exhibits a similar variation. For the 2011 evaluation year, the actual number of new permits and revisions adding acreage issued in primacy states ranged from 0 in 8 states to 238 in Kentucky.

At the ratio of 0.33 waiver requests per permit or revision issued, state regulatory authorities need to provide public notice and prepare written findings for 147 public road waiver requests each year ( $0.33 \times 445$  new permits and revisions per year). The regulation also requires the regulatory authority to hold a public hearing upon request, but we are not aware of any such requests in primacy states. Based upon our experience and consultation with the individuals listed in item 8, preparing the public notice and the finding required for each waiver request takes an average of 1 hour each. Therefore, we estimate that the annual burden for the 24 state regulatory authorities to prepare the

notices and findings required by §761.14(c) will be **294 hours** [147 waiver requests x (1 hour per notice per request + 1 hour per finding per request)] per year.

b. Estimated Annual Wage Cost to Respondents

We estimate that the wage costs to state permitting specialists to be \$50 per hour (rounded and including benefits). Therefore, the estimated total annual wage cost for state regulatory authorities to prepare the public notices and written findings for the public road buffer zone waivers under § 761.14(c) is **\$14,700** (\$50 per hour x 294 hours per year).

(See list of items with identical responses for item 12 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

13. Total Annual Non-Wage Cost Burden to Respondents

a. Annualized Capital and Start-Up Costs

The information collection requirements of §761.14(c) do not involve any capital or start-up costs apart from expenditures associated with general administration of a regulatory agency.

b. Operation and Maintenance Costs

There are no significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of §761.14(c).

14. Estimate of Annualized Cost to the Federal Government

Oversight: There is no established frequency for conducting oversight reviews of state compliance with the requirements of 30 CFR 761.14(c). If we conduct an oversight review of this topic in one state program per year, that review would require an average of 40 hours at \$56 per hour (GS-12/5 regulatory program specialist, rounded, and including 1.5 multiplier for benefits), which means that the estimated annual cost to OSM for this oversight activity is **\$2,240**.

Federal Programs: OSM is the regulatory authority for all operations under Federal regulatory programs, on Indian lands, and on Federal lands in states without a cooperative agreement. Based upon data for the 2011 evaluation year, we estimate that we will annually issue approximately 2 new permits or permit revisions adding acreage for lands and operations for which we are the regulatory authority. We do not routinely receive requests for public road waivers. However, we are including one request per year as a placeholder. At the wage rate of \$56 per hour, the annual wage cost to the Federal government to provide public notice and prepare written findings for this request would

be **\$112** [(1 hour per notice per request + 1 hour per finding per request) x \$56 per hour]. There are no significant non-wage costs associated with the notice and findings.

We received only one request for a public hearing on a waiver request for a public road during the past 3 years. Therefore, we are not including its costs in this estimate. However, for this one instance on Indian lands, we incurred wage costs of \$1,571 [32 hours (including travel time) x \$49.10 per hour for a GS-12/5 regulatory program specialist (including a 1.5 multiplier for benefits)]. In addition, we incurred \$400 in nonwage costs to publish the public notices in newspapers and to announce the hearing on radio.

(See list of items with identical responses for item 14 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

Total Federal Cost:

	\$ 2,240	Oversight
+	\$ 112	Federal programs
	\$ 2,352	Total Federal cost

15. The 294 burden hours that we are requesting for §761.14(c) represent an increase of 170 hours from the 124 hours previously approved for this activity. The difference is the result of adding a burden for the required public notice and an increase in the number of new permits and revisions for which public notice and findings are required.

	124	hours currently approved by OMB
+	170	hours due to adjustments
	294	hours requested

16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.

**30 CFR 761.15 – Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling**

Justification

Section 522(e) of SMCRA prohibits or restricts surface coal mining operations on certain lands unless the operation was in existence on the date of enactment of SMCRA (August 3, 1977) or unless a person has valid existing rights to conduct such operations. Protected lands include units of the National Park System, wildlife refuges, wilderness areas, historic sites, Federal lands in national forests, and buffer zones for public roads, public parks, public buildings, occupied dwellings, and cemeteries.

Section 522(e)(5) of the Act allows surface coal mining operations within the buffer zones for occupied dwellings if the owner of the dwelling waives the prohibition that otherwise would apply. To implement this provision, §761.15 requires that the permit applicant submit a written waiver from the dwelling's owner.

The requirement for permit applicants to submit a signed waiver to conduct surface coal mining operations within the buffer zone of an occupied dwelling also appears in 30 CFR 778.16(c), and the burden of compliance with that requirement is included in the information collection burden for that section.

## **30 CFR 761.16 - Submission and processing of requests for valid existing rights determinations**

### Justification

1. Section 522(e) of SMCRA prohibits or restricts surface coal mining operations on certain lands unless the operation was in existence on the date of enactment of SMCRA (August 3, 1977) or unless a person has valid existing rights (VER) to conduct such operations. Protected lands include units of the National Park System, wildlife refuges, wilderness areas, historic sites, Federal lands in national forests, and buffer zones for public roads, public parks, public buildings, occupied dwellings, and cemeteries.

Section 761.16 establishes submission, public notice, and processing requirements for requests for VER determinations. Section 201(c)(2) of SMCRA, which provides that the Secretary shall promulgate such regulations as are necessary to carry out the purposes and provisions of the Act, authorizes collection of the information required by §761.16. Collection of this information is necessary to properly implement the VER exception from the prohibitions and restrictions of section 522(e) of the Act without compromising Congressional intent to prohibit or restrict new surface coal mining operations on these sensitive or environmentally significant lands.

2. OSM and state regulatory authorities use the information collected under §761.16 to ensure that persons who conduct or intend to conduct surface coal mining operations on the lands listed in section 522(e) of the Act under the VER exception actually have VER. Members of the public use the public notices required by §761.16 to gain knowledge of, and provide input on, proposals to conduct surface coal mining operations on the lands listed in section 522(e) of the Act.
3. See list of items with identical responses.
4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.

## 12. Estimated Information Collection Burden

### a. Burden Hour Estimates for Respondents

#### *Burden on Persons Requesting VER Determinations*

Based upon data provided by individuals in Item 8 and our experience as a regulatory authority, we estimate that approximately 5% of new permits and permit revisions adding acreage issued for surface and underground coal mining operations will contain a VER determination request, with two-thirds (67%) of those determinations involving occupied dwellings. State-specific annual evaluation reports for the 2011 evaluation year show that we and the 24 state regulatory authorities issued 447 new permits and permit revisions adding acreage during that year, which translates to approximately 22 requests for VER determinations per year (0.05 x 447 new permits issued).

30 CFR 761.16(b) sets forth the information that a person seeking a VER determination must include in his or her request. Most of this information consists of property rights ownership data and a demonstration that the person has the legal right under state property law to conduct surface coal mining operations. Collection of this information is a customary and usual business practice in the mining industry in that operators conduct the necessary title searches and legal research as part of the process of acquiring or leasing surface or mineral rights and procuring right of entry from property owners.

Burdens unique to this regulation include the actual preparation of a description of those rights and the proposed surface coal mining operation, together with an explanation of how and why the requester meets one or more of the standards for VER. We estimate that preparation of this description, providing the necessary explanation of how the request meets the pertinent standard, and copying supporting documents will require an average of 6 hours per request, which translates to a total burden of **132 hours** (22 requests per year x 6 hours per request).

In addition, this regulation contains a requirement for notification to the owners of the land to which the VER request pertains, plus a copy of all comments received in response to this notification. We estimate that, on average, the requester will have to notify one person per request. Assuming that preparation and delivery of each notification letter, plus copying of any comments received, requires an average of 1 hour per letter, the burden for this requirement will total **22 hours** (1 notification per request x 1 hour per notification x 22 requests per year).

Hence, we estimate that the total annual information collection burden for persons requesting VER determinations for §761.16 will be **154 hours** (132 hours for request preparation + 22 hours for landowner notification).

#### *Burden on State Regulatory Authorities*

State-specific annual evaluation reports for the 2011 evaluation year show that the 24 state regulatory authorities issued 445 new permits and permit revisions adding acreage during that year, which translates to approximately 22 requests for VER determinations per year (0.05 x 445 new permits issued).

Section 761.16(c) provides that, upon receipt of a request for a VER determination, the agency responsible for the determination must review the submission to determine whether it includes all necessary components under §761.16(b). We anticipate that this review will require an average of 3 hours to complete.

Section 761.16(d) provides that, once a request for a VER determination is administratively complete, the agency responsible for the determination must:

- Publish notice of the request in a local newspaper.
- Provide a copy of the notice to the surface and mineral owners of the land in question and to the agency with jurisdiction over the protected feature. Because two-thirds of all requests involve only occupied dwellings, for which there is no agency with jurisdiction, we estimate that, for each request received, an average of three persons would need to be notified under this provision.

Section 761.16(e) further provides that the agency responsible for the determination must:

- Conduct a review of the merits of the request and provide the requester with written notice of any deficiencies identified.
- Prepare a decision document on the request.
- Provide a copy of the decision document to the requester, the owner or owners of the land to which the determination applies, and, when applicable, to the agency with jurisdiction over the protected feature.
- Publish notice of the decision in a local newspaper.

Based on our experience, preparing a newspaper notice would require an average of 1 hour per notice, as would preparation and mailing of a transmittal letter or letter of notification. We estimate that reviewing the merits of an average request will require approximately 4 hours, and that, on average, preparation of a decision document will require an additional 4 hours per request. Therefore, we estimate that the burden to the 24 state regulatory authorities for compliance with the information collection requirements of 30 CFR 761.16 will total **418 hours**, broken out as follows:

- 66 hours for administrative completeness reviews under §761.16(c) (3 hours per review x 22 requests per year).
- 44 hours for newspaper notices under §761.16(d) and (e) [2 notices per request (the notice of receipt and the decision notice) x 1 hour per notice x 22 requests per year].
- 132 hours for transmittal of copies of newspaper notices to surface and mineral owners of the land in question and to any agency with jurisdiction over protected features under §761.16(d) and (e) [6 transmittal letters per request (3 for the notice of receipt + 3 for the decision notice) x 1 hour per transmittal letter x 22 requests per year].
- 88 hours for reviews of the merits of requests required by §761.16(e) (4 hours per review x 22 requests per year).
- 88 hours for preparation of written decision documents (1 document per request x 4 hours per document x 22 requests per year).

*Total Burden*

For all respondents, we estimate that the total annual information collection burden for 30 CFR 761.16 would be **572 hours** (154 hours for persons requesting VER determinations + 418 hours for state regulatory authorities).

b. Estimated Annual Wage Cost to Respondents

We estimate the following annual wage costs (rounded) are required to complete the collection for this section:

<b>Industry Wage Cost Per Response</b>			
<b>Position</b>	<b>Hour Burden per Response</b>	<b>Cost per Hour (\$) (including benefits)</b>	<b>Total Wage Burden (\$) (rounded)</b>
Clerical	2	22.69	45
Environmental Engineer	5	57.44	287
<b>Total</b>	<b>7</b>		<b>332</b>

Therefore, we estimate that the total annual wage cost to all industry respondents for 30 CFR 761.16 is **\$7,304** (\$332 per response x 22 responses per year).

In addition, the state regulatory authority requires an average of 19 hours to fulfill its responsibilities for each VER request submitted under 30 CFR 761.16. We estimate that the wage costs for state permitting specialists to be \$50 per hour (rounded and including

benefits). Therefore, the estimated total annual wage cost for state regulatory authorities under §761.16 is **\$20,900** (\$50 per hour x 19 hours per VER request x 22 VER requests per year).

The wage cost burden to all respondents under 30 CFR 761.16 is **\$28,204** (\$7,304 for industry + \$20,900 for state regulatory authorities).

(See list of items with identical responses for item 12 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

13. Total Annual Non-Wage Cost Burden to Respondents

a. Annualized Capital and Start-Up Costs

The information collection requirements of §761.16 do not involve any capital or start-up costs apart from expenditures associated with customary business practices or general administration of a regulatory agency.

b. Operation and Maintenance Costs

For persons requesting VER determinations, there are no significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of § 761.16.

For state regulatory authorities, the only significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of §761.16 are the publication costs for the 2 newspaper notices required for each request for a VER determination. Based on our experience and consultation with the individuals listed in item 8, we estimate that publication of a newspaper notice will cost an average of \$75 per notice. Therefore, the 24 state regulatory authorities will incur total annual non-wage expenses of **\$3,300** (2 notices per VER request x 22 VER requests per year x \$75 for publication of each notice).

14. Estimate of Annualized Cost to the Federal Government

Oversight: There is no established frequency for conducting oversight reviews of state compliance with the requirements of 30 CFR 761.16. If we conduct an oversight review of this topic in one state program per year, that review would require an average of 40 hours at \$56 per hour (GS-12/5 regulatory program specialist reviewing the application, rounded, including 1.5 multiplier for benefits), which means that the estimated annual cost to OSM for this oversight activity is **\$2,240**.

Federal Programs: OSM is the regulatory authority for all operations under Federal regulatory programs, on Indian lands, and on Federal lands in states without a cooperative agreement. In addition, we are responsible for making VER determinations

for the lands listed in paragraphs 30 CFR 761.11(a) and (b) [paragraphs (e)(1) and (2) of section 522 of SMCRA], regardless of whether we are the regulatory authority.

Based on historical data, we receive at most one request per year for a VER determination for lands for which we are the regulatory authority. As explained in detail in item 12.a., each request requires an average of 19 hours to process. At the wage and benefit rate of \$56 per hour, the annual wage cost to the Federal government for processing this request would be **\$1,064** (19 hours per request x \$56 per hour x 1 request per year). The only significant non-wage costs associated with processing this request is publication of two newspaper notices per request, which would total **\$150** per year (2 notices per request x \$75 per notice x 1 request per year).

In addition, we receive at most one request per year for a VER determination for lands protected under 30 CFR 761.11(a) or (b) for Federal lands, including National parks and Forests. This type of request generally is much more complex and requires more extensive review—approximately 75 hours. At the wage and benefit rate of \$56 per hour, the annual wage cost to the Federal government for processing this request would be **\$4,200** (75 hours per request x \$56 per hour x 1 request per year). In terms of non-wage costs, this type of request requires two publications in the Federal Register in addition to the two newspaper notices. The Office of the Federal Register charges approximately \$500 per page and the average VER notice is 2 pages long. Therefore, the non-wage costs associated with processing this request would total **\$2,150** per year [(2 newspaper notices per request x \$75 per notice + 2 Federal Register notices per request x \$1,000 per notice) x 1 request per year].

(See list of items with identical responses for item 14 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

Total Federal Cost:

\$ 2,240	Oversight
+ \$ 5,264	Federal programs
+ \$ 2,300	Non-wage costs
\$ 9,804	Total Federal cost

15. The 572 burden hours that we are requesting for §761.16 is an increase of 175 hours from the 397 hours previously approved for this activity. The difference results from an increase in the number of requests for VER determinations.

397	hours currently approved by OMB
+ 175	hours due to an adjustment for an increase in use
572	hours requested

This information collection request also seeks approval of an additional \$626 in non-wage costs, for a total of \$3,300 due to adjustments.

16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.

## 30 CFR 761.17 -- Regulatory authority obligations at time of permit application review

### Justification

1. Section 522(e) of SMCRA prohibits or restricts surface coal mining operations on certain lands unless the operation was in existence on the date of enactment of SMCRA (August 3, 1977) or unless a person has valid existing rights to conduct such operations. Protected lands include units of the National Park System, wildlife refuges, wilderness areas, historic sites, Federal lands in national forests, and buffer zones for public roads, public parks, public buildings, occupied dwellings, and cemeteries.

To assist in implementing this provision of the Act, §761.17(a) requires that the regulatory authority review each permit and revision application that it receives to determine whether the application includes any lands protected under section 522(e) of SMCRA. 30 CFR 761.17(c) provides that, if the regulatory authority has difficulty determining whether a proposed operation is located on lands protected under section 522(e) of the Act, the regulatory authority must transmit a copy of relevant portions of the permit application, together with a request for comment, to the agency with jurisdiction over those lands for location verification.

Section 522(e)(3) of SMCRA provides that a person may not conduct surface coal mining operations that will adversely affect a publicly owned park or place included on the National Register of Historic Places unless the operations are approved jointly by the regulatory authority and the governmental agency with jurisdiction over the park or place. To implement this provision of the Act, §761.17(d) requires the regulatory authority to transmit a copy of the applicable portions of the permit application, together with a request for approval or disapproval, to the governmental entity with jurisdiction over the park or place for review and comment, whenever the regulatory authority determines that operations would adversely affect a publicly owned park or place included on the National Register of Historic Places.

Section 201(c)(2) of SMCRA, which provides that the Secretary shall promulgate such regulations as are necessary to carry out the purposes and provisions of the Act, authorizes collection of the information required by § 761.17(c) and (d). Collection of this information is necessary to properly implement the provisions of section 522(e) of the Act without compromising Congressional intent to prohibit or restrict new surface coal mining operations on those lands.

2. OSM and state regulatory authorities use the information collected under §761.17(c) and (d) to ensure that persons who conduct or intend to conduct surface coal mining operations on the lands listed in section 522(e) of the Act meet the statutory criteria for waivers or exceptions from the prohibition on conducting operations on those lands.
3. See list of items with identical responses.

4. See list of items with identical responses.
5. See list of items with identical responses.
6. See list of items with identical responses.
7. See list of items with identical responses.
8. See list of items with identical responses.
9. See list of items with identical responses.
10. See list of items with identical responses.
11. See list of items with identical responses.
12. Estimated Information Collection Burden

- a. Burden Hour Estimates for Respondents

*Location Verification*

We know of no instance in which a regulatory authority has used the location verification provisions of §761.17(c) or has had difficulty determining whether a permit application includes lands protected under section 522(e) of the Act. We anticipate that this pattern of nonuse will continue. Therefore, we are including only a placeholder burden estimate based upon one use per year. We expect that the regulatory authority will need an average of 2 hours to prepare the letter and copy relevant portions of the permit application, which means that the total annual information collection burden for §761.17(c) is **2 hours** (1 application x 2 hours per application).

*Joint Approval for Historic Places and Publicly Owned Parks*

Based on discussions with our regional offices and the individuals listed in item 8, we have found no instances during the past 3 years in which a regulatory authority used the joint approval provisions of § 761.17(d) with respect to surface coal mining operations that would adversely affect publicly owned parks or places on the National Register of Historic Places. We anticipate that this pattern of nonuse will continue. Therefore, we are including only a placeholder burden estimate based upon one use per year. We expect that the regulatory authority will need an average of 2 hours to prepare the letter and copy relevant portions of the permit application, which means that the total annual information collection burden under 30 CFR 761.17(d) is **2 hours** (1 application x 2 hours per application).

*Total Burden*

For the reasons discussed above, we are requesting a total annual information collection burden under §761.17 of **4 hours** [2 hours for § 761.17(c) + 2 hours for § 761.17(d)].

b. Estimated Annual Wage Cost to Respondents

We estimate that the wage costs to state permitting specialists to be \$50 per hour (rounded and including benefits). Therefore, the estimated total annual wage cost for state regulatory authorities to prepare the letter and copy relevant portions of the permit application under §761.17 is **\$200** (\$50 per hour x 4 hours per application).

(See list of items with identical responses for item 12 on page 9 for a discussion of how the following wage costs were developed, including benefits. )

13. Total Annual Non-Wage Cost Burden to Respondents

a. Annualized Capital and Start-Up Costs

The information collection requirements of § 761.17 do not involve any capital or start-up costs apart from expenditures associated with general administration of a regulatory agency.

b. Operation and Maintenance Costs

The only significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of §761.17; all costs, such as delivery and office supply expenses, are limited to those associated with customary business practices and general administration of a regulatory program.

14. Estimate of Annualized Cost to the Federal Government

Oversight: There is no established frequency for conducting oversight reviews of state compliance with the requirements of 30 CFR 761.17. If we conduct an oversight review of this topic in one state program per year, that review would require an average of 20 hours at \$56 per hour (GS-12/5 regulatory program specialist/hydrologist reviewing the application, rounded, including 1.5 multiplier for benefits). We estimate that the annual cost to us for this oversight activity would be **\$1,120** (20 hours per review x \$56 per hour x 1 review per year).

Federal Programs: OSM is the regulatory authority for all operations under Federal regulatory programs, on Indian lands, and on Federal lands in states without a cooperative agreement. We have never used the provisions of 30 CFR 761.17(c) or (d). However, for purposes of this analysis, we will include a placeholder of one use per year, which would require a total of 4 hours [2 hours for §761.17(c) + 2 hours for §761.17(d)]. At the wage and benefit rate of \$56 per hour, the annual wage cost to the Federal

government under 30 CFR 761.17(c) and (d) would be **\$224** (4 hours x \$56 per hour). There would be no significant or distinct non-wage costs.

Total Federal Cost:

	\$ 1,120	Oversight
+	\$ 224	Federal programs
+	\$ 0	Non-wage costs
	\$ 1,344	Total Federal cost

15. The 4 burden hours that we are requesting for §761.17 is unchanged from the 4 hours previously approved for this activity. This information collection request also seeks to remove the \$8 in non-wage costs based on customary business practices.
16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.