

**Supporting Statement for Paperwork Reduction Act For
30 CFR Part 702 - Exemption for Coal Extraction
Incidental to the Extraction of Other Minerals**

OMB Control Number 1029-0089

Terms of Clearance: None

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, 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 in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*
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 (Item 5 of OMB Form 83-I), 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. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 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 in Item 13 of OMB Form 83-I.

* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

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 shown in Items 12 and 14).

* 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]. 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. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.
15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.
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 certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the OMB Form 83-I is checked "Yes", the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

- 1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.*
- 2. Describe the procedures for the collection of information including:
 - * Statistical methodology for stratification and sample selection,*
 - * Estimation procedure,*
 - * Degree of accuracy needed for the purpose described in the justification,*
 - * Unusual problems requiring specialized sampling procedures, and*
 - * Any use of periodic (less frequent than annual) data collection cycles to reduce burden.**
- 3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.*
- 4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for*

answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.

5. *Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.*

SUPPORTING STATEMENT FOR REPORTING REQUIREMENTS
OF 30 CFR PART 702

Introduction

This information collection clearance package is being submitted by the Office of Surface Mining Reclamation and Enforcement (OSM) to request permission to continue collecting information under 30 CFR Part 702 of the OSM permanent regulatory program. This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87, which grants an exemption from the requirements of SMCRA to operators extracting not more than 16 2/3 percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination. The information collection for 30 CFR Part 702 was previously approved by OMB and was assigned clearance number 1029-0089.

The information collection estimates contained in this supporting statement are based on estimated burdens that will be imposed during the next year in States that have an approved amended program and in which there are operations subject to the exemption provided for under 30 CFR Part 702.

Sections 702.11, 702.12, 702.13, 702.15, and 702.18 contain information collection requirements. Each of these will be discussed separately in the following justification statement. The following tables summarize the number of respondents, the number of hours per respondent, the total hours, and the changes to the OMB-approved burden estimates.

SUMMARY OF 30 CFR 702

Section	Number of Operators	Number of SRAs	Hours per Operator	Hours per SRA	Total Hours Requested	Hours in Inventory	Difference
702.11 & 12	5	5	28	24	260	260	0
702.13(a)	0	20	0	1	20	12	+8
702.15	5	5	1	2	15	9	+6
702.18	40	40	5	1	240	300	-60
Total			34	28	535	581	-46

Supporting Statement for Reporting and Recordkeeping
Requirements under 30 CFR 702.11 and 702.12

A. Justification

1. Section 702.11 requires that operators who believe their mines may qualify for an incidental mining exemption file an application for exemption with the appropriate regulatory authority in order to obtain that benefit. Section 702.12 describes the information that must be provided in an application for exemption.
2. Pursuant to section 702.11, the regulatory authorities will require the submission of initial applications by all operators wishing to claim exemptions under section 701(28) of SMCRA. The applications submitted will provide the regulatory authorities with the characteristics of the mining operations, the date the operations are expected to be completed and all other information needed by the regulatory authorities to make initial determinations whether operations qualify for exemptions.

In practice, a regulatory authority will conduct a two-tiered review process of each application submitted by an operator. The first tier involves examining the application to determine that it is complete pursuant to 30 CFR 702.11(c). During this completeness review, a preliminary review of the application will be made for erroneous or fraudulent information. This will entail a cursory scan for any obviously erroneous or fraudulent information and, for applicants with a history of frequent or serious failure to comply with SMCRA; it will entail a more careful examination on the suspicion that such applicants may be attempting to circumvent the requirements of SMCRA by attempting to improperly obtain the exemption. The second tier review involves evaluating the entire application in detail, and making a written determination on whether the operation should be granted the exemption.

Section 702.12(a) through (m) lists minimum information that must be included in an application for exemption. Name and address of the operator are required by section 702.12(a) for identification purposes. Sections 702.12 (b) through (f) require a list of the minerals to be extracted, estimates of annual and cumulative production and revenue

associated with the extraction of all minerals including coal, where coal or other minerals have been used rather than sold, the projected fair market values of the coal and other minerals at the time of sale or projected use, and the basis of all annual and cumulative production, annual and cumulative revenue, and fair market projections. By requesting the basis of such tonnage estimates, in addition to the figures themselves, the regulatory authority will be able to perform independent calculations based on actual data for comparisons. The requirements of section 702.12(g) and (h) are, respectively, a description, including county, township if any, and boundary of the land of sufficient certainty that the mining area may be located and distinguished from other areas and surface coal mining operations; and an acreage estimate composing the mining area over the anticipated life of the mining operation. Public participation for this regulation is provided for in section 702.12(I). That section requires publication, in a newspaper of general circulation in the county of the mining area, of a public notice of filing an administratively complete application for exemption with the regulatory authority, where the public notice identifies the persons filing for the exemption. The next three requirements, section 702.12(j), (k) and (l) are, respectively, representative cross-sections showing relative position and approximate thickness and density of all minerals including coal and the relative position of any other materials to be extracted; a map of appropriate scale which clearly identifies the mining area; and a general description of mining and mineral processing activities. This information will allow the regulatory authority to evaluate the tonnage ratio of coal to other minerals required to confirm that the coal tonnage does not exceed $16 \frac{2}{3}$ percent of the total tonnage of coal and other commercially valuable minerals extracted for sale or use over the life of the mine.

Section 702.12(m) requires a summary of sales commitments, if any, or a description of potential markets for minerals to be extracted from the mining area as evidence of commercial use or markets for the minerals. Section 702.12(n) requires the application to include a description of the use of minerals other than coal to be commercially used by the operator.

Section 702.12(o) requires existing operations which have

extracted coal or other minerals prior to filing an application for an exemption, to submit, in addition to the above information, any relevant documents received from the regulatory authority documenting its exemption, cumulative production and revenue of the coal and other minerals from each mining area, and tonnage of stockpiled minerals required to meet future business obligations.

As provided in section 702.12(p), the regulatory authority may request any other information pertinent to the qualification of the operation as exempt.

The collection of all of this specific information is necessary so that the regulatory authority will be able to verify that the 16 2/3 exemption from the requirements of SMCRA is not being improperly used by coal mine operators to circumvent SMCRA. Improper use of the 16 2/3 exemption has been identified by citizens, environmental organizations, State regulatory authorities (SRA's) and OSM itself as being an area of serious abuse of the requirements of SMCRA.

3. Requested information is received infrequently by States, generally only five per year in a few States. OSM discussed the electronic submission of these applications with the Commonwealth of Kentucky. The regulatory authority indicated that their focus is on electronic receipt of full permit applications. Within the next three years they will attempt to focus on electronic submissions of exemption applications. However, permit applicants cannot be forced to submit electronically. Therefore, OSM anticipates that it will take several years before respondents begin supplying the information electronically.
4. This is a unique information collection, there is no duplication. No similar information is collected pertaining to exempt operations by OSM, or any other Federal agency.
5. Some of the operators filing applications are small businesses. Information required is limited to the minimum detail necessary to determine whether the mining area operation is exempt.
6. Not applicable. This is a one-time information collection.
7. Guidelines in 5 CFR 1320.5(d)(2) are not exceeded.

8. During the week of October 2, 2006, OSM staff contacted representatives of two companies who prepared mining permits which extract coal under the exemption for 30 CFR Part 702:

Mr. James Turner
James Turner Consulting
4235 Settle Brook Trail
Owensboro, Kentucky 42323

Mr. Lantz G. Rankin
Heritage Technical Associates
Route 119 and Hurricane Branch
Chapmanville, West Virginia 25508

It was determined that the average burden is 28 hours based on the discussions with these operators.

Also OSM staff contacted staffs of State regulatory authority who review, process and issue the mining permits which extract coal under the exemption for 30 CFR Part 702:

Mr. Ernie Ashby
Illinois Department of Natural Resources
Office of Mines and Minerals
Land Reclamation Division
One Natural Resources Way
Springfield, Illinois 62701
(217) 782-6791

Mr. Dave Phillips
Indiana Department of Natural Resources
Division of Reclamation
R.R. #2, Box 129
Jasonville, Indiana 47438
(812) 665-2207

The above respondents did not identify any concerns regarding the availability of data, frequency of collection, clarity of instructions and record keeping of the information collection requirements.

On December 8, 2006, OSM published in the Federal Register (71 FR 71189) 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. No payments or gifts are awarded to respondents.
10. The SRA's will keep the information confidential if, at the time of submission, (1) the operator requests in writing that it be kept confidential, and (2) the information concerns trade secrets, or (3) the information is privileged commercial or financial information of the operator. The information may be available to the public after notice and a hearing is afforded persons both seeking and opposing disclosure of the information. All information submitted without requesting confidentiality will become public records.
11. Not applicable. Sensitive information is not required.
12. Reporting and Reviewing burden.
 - a. Estimate of Respondent Reporting Burden

It is estimated that 5 respondents will file applications for exemptions each year, requiring 28 hours per application. This estimate is based on current experience of OSM personnel with the exemption application process and discussions with the individuals identified in item 8. The

burden is estimated to be 140 hours (5 respondents x 28 hours per response).

In addition, each SRA will require approximately 24 hours per application to conduct its two-tier review of the request and prepare its decision. The SRA burden is estimated to be 120 hours (5 respondents x 24 hours per review).

Therefore, the burden to all respondents is approximately 260 hours (140 hours for applicants + 120 hours for SRA's).

b. Estimate of wage cost to respondents:

At a rate of \$60 per hour for respondents, the total annual cost to all permit applicants would be \$8,400 (140 hours x \$60 per hour). At a rate of \$45 per hour for SRA, the total annual cost to all SRA would be \$5,400 (120 hours x \$45 per hour). The total annual cost to all respondents and SRA would be \$13,800 (\$8,400 for operator + \$5,400 for SRA)

13. Estimated Total Annual Cost

Each permit applicant is required to publish a newspaper announcement notifying the public of the applications, and request public comment. At \$40 per announcement, total capital and start-up costs for all respondents is \$200.

14. Estimate of Cost to the Federal Government

Oversight: In keeping with the current guidance concerning oversight of State program implementation, which de-emphasizes process reviews, OSM does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 702.11 and 702.12 in the absence of any indication of problems. Assuming that OSM conducts an oversight review of this topic for one State program per year and that the review requires an average of 8 hours, the annual cost to the Federal government for this oversight activity is an estimated \$360 (8 hours x \$45 per hour).

Federal Programs: OSM does not anticipate receiving any exemption applications under Federal programs.

Total estimated cost to the Federal government: \$360 for oversight.

15. It is estimated that it will require respondents a one-time only effort of 28 hours per mine area being reported to complete this information collection reporting and recordkeeping requirement. There are approximately 5 respondents who will submit applications for exemption. The burden for applicants is 140 hours

In addition, each SRA must review and make a determination on the application, requiring 24 hours per response. The burden for SRAs is 120 hours. This request does not alter the 260 hours currently approved by OMB.

16. There are no plans for publication of this information.
17. Not applicable. The OMB approval is displayed in 30 CFR 702.
18. Not applicable. There are no exemptions to item 19 of the OMB 83-I form.

B. Collection of Information Employing Statistical Methods.

This section is not applicable. Statistical methods are not employed.

Supporting Statement For Reporting Requirements
Under 30 CFR 702.13(a)

A. Justification

1. Section 702.13(a) requires that ". . . all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption." Paragraphs 702.13(b) and (c) of section 702.13 provide protection from public disclosure for confidential information held by the regulatory authorities. Therefore, section 702.13(a) requires the SRA's to make all non-confidential information acquired pursuant to sections 702.11, 702.12 and 702.18 available for public inspection and copying.

The purpose of this section is to encourage citizen participation in the enforcement of SMCRA by making the exemption records available to the public, but comply with confidentiality requirements.

2. This information is used by OSM and the public to determine whether the SRA's are properly granting or denying incidental coal mining exemptions under the applicable provisions of their approved State programs.
3. Requested information is received infrequently by States, generally several per year in a few States. OSM discussed the electronic submission of these applications with the Commonwealth of Kentucky. The regulatory authority indicated that their focus is on electronic receipt of full permit applications. Within the next three years they will attempt to focus on electronic submissions of exemption applications. However, permit applicants cannot be forced to submit electronically. Therefore, OSM anticipates that it will take several years before respondents begin supplying the information by computer.
4. The requested information is unique to the SRA and no other source is available. No similar information is collected pertaining to incidental coal mining exemption operations by OSM or any other Federal agency.

5. Some of the operators filing applications are small businesses. Information required is limited to the minimum detail necessary to determine whether the mining area operation is exempt.
6. Information is collected on each incidental coal mining operation under the jurisdiction of the SRA. The collection is needed to determine if the SRA is properly deciding which incidental coal mining operations are exempt from SMCRA.
7. Guidelines in 5 CFR 1320.5(d)(2) are not exceeded.
8. OSM staff consulted with the OSM Knoxville Field Office, which is the SRA in the State of Tennessee, and with other field office staff very knowledgeable about such operations. Based on the information obtained during this consultation process, as previously estimated, about half of the operators requested that certain eligible information submitted to the SRA be held confidential.

On December 8, 2006, OSM published in the Federal Register (71 FR 71189) 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. No payments or gifts are awarded to respondents.
10. Pursuant to section 702.13(b) and (c), the SRA will keep the information confidential if, at the time of submission, (1) the operator requests in writing that it be kept confidential, and (2) the information concerns trade secrets, or (3) the information is privileged commercial or financial information of the operator. The information may be available to the public after notice and a hearing is afforded persons both seeking and opposing disclosure of the information. All information submitted without requesting confidentiality will be made available to the public.
11. Not applicable. No sensitive information is required.
12. Reporting and Reviewing burden.

a. Estimate of Respondent Reporting Burden

Pursuant to section 702.13, all of the non-confidential data submitted in the applications for exemption and subsequent annual reports will be made available by the SRA's for public inspection and copying. OSM anticipates that the financial and production data submitted in approximately one-half of the initial applications for exemption, and subsequent annual reports, will be classified as confidential. Thus, OSM expects this record keeping requirement to consist of maintaining separate non-confidential data information for each such application.

It is estimated that there are 40 operators (20 previously-approved exemption operations, 15 completed operations and 5 new applications) for which a non-confidential file of information will be made available for public inspection and copying. It is estimated that approximately one-half of them, or 20 operators will not request that the financial and production data in their applications or annual reports be confidential.

Based on the experience and expertise of OSM's staff, it is estimated that preparation of this non-confidential information file by the SRA's will require 1 hour per mine area per year. It is estimated that the reporting burden is approximately 20 hours (20 operations x 1 hour per operation) for all SRA's to prepare the public files.

b. Estimate of wage cost to respondents

Using a rate of pay equal to \$45 per hour, the total cost to the SRA's for setting up and maintaining this non-confidential file for respondents is estimated at \$900 (20 operations x 1 hour per operation x \$45 per hour) or approximately \$45 per operation (1 hour per operation x \$45 per hour).

13. Estimated Total Annual Cost

Not applicable. There are not costs incurred beyond the hourly wage costs or minimal postage costs.

14. Estimate of Cost to the Federal Government

Oversight: In keeping with the current guidance concerning oversight of State program implementation, which de-emphasizes process reviews, OSM does not anticipate conducting any significant oversight review of compliance with the State program counterparts to the requirements of 30 CFR 702.13(a) in the absence of any indication of problems. Assuming that OSM conducts one review of the confidentiality requirements of an exemption application and the review takes approximately 1 hour, the annual cost to the government for this oversight activity is an estimated \$45 (1 hour per oversight review x \$45 per hour).

Federal Programs: OSM will review all exemption applications/reports under Federal programs for confidentiality requirements and maintain a file available to the public for each. It is estimated that 2 Federal program exemptions will request certain information to be held confidential. The cost for maintaining non-confidential files (2) for operations in Federal Program States is estimated to be \$90 (2 exemption X 1 hour per exemption x \$45 per hour).

Total estimated cost to the Federal government: \$135 (\$45 for oversight + \$90 for Federal programs).

15. Based on the experience of OSM's staff, and discussions with the respondents identified in item number 8 and 12a above, it is estimated that preparation of this non-confidential information file will require 1 hour per mine area per year. The total burden to SRA's (respondents) is estimated to be approximately 20 hours. Our previous submission estimated this burden at 12 hours. There will be a decrease in the estimated burden for sections 702.13 (a) due to a decrease to the number of respondents from 25 to 20. There will be an increase in re-estimate of review time for each operation from 1/2 hour to 1 (one) hour. As a result, this request will add 8 hours (total) to the currently approved estimate due to a decrease in use and an increase in SRA review time.

	12	hours currently approved by OMB
-	2	hours due to decrease in number of submissions
+ <u>10</u>		hours due to an increase in re-estimate

20 hours requested

16. There are no plans for publication of this information.
17. Not applicable. The OMB approval is displayed in 30 CFR 702.
18. Not applicable. There are no exemptions to item 19 of the OMB 83-I form.

B. Collection of Information Employing Statistical Methods.

This section is not applicable. Statistical methods are not employed.

Supporting Statement for Reporting Requirements
Under 30 CFR 702.15

A. Justification

1. Section 702.15(a) requires operators of mining areas exempt pursuant to section 701(28) of SMCRA to maintain "information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the regulatory authority." Paragraph 702.15(b) requires operators of mining areas exempt pursuant to section 701(28) of SMCRA to notify the SRA upon completion of mining or permanent cessation of all coal extraction activities.

2. Pursuant to section 702.15(a), the respondents must make accessible to the SRA, all information relevant to the exemption. This information is used by the SRA or OSM when conducting a site inspection to verify the validity of the information provided in the initial application and the subsequent annual reports and the consequent right to incidental coal mining exemption. Not being able to verify data on site would make regulation of the exemption ineffective since there would be no disincentive for an unscrupulous operator to falsify an initial application or subsequent annual report.

Pursuant to section 702.15(b), the respondents must notify the SRA when mining has been completed or coal mining activity has ceased. This information is used by the SRA to verify that upon completion of coal mining operations that the operation has remained entitled to the incidental mining exemption for the entire life of the mining operation, or to determine that the operation was, or is, no longer exempt and must be reclaimed.

3. On-site maintenance of the information is generally conducted electronically, although some operators may maintain the information in hard copy. OSM and State regulatory authorities cannot require this information be available on computers.

4. This is a unique information collection, there is no duplication. No similar information is collected pertaining

to exempt operations by OSM, or any other Federal agency.

5. Some of the operators, required to maintain records and to notify the SRA of completion or cessation of operations and annual reports are small businesses. Information required is limited to the minimum detail necessary to determine whether the mining area operation can continue to be exempt.
6. Less frequent availability for inspection would result in interested parties and affected persons being denied their rights under SMCRA.
7. Guidelines in 5 CFR 1320.5(d)(2) are not exceeded.
8. During October 2003, OSM staff contacted representatives of two companies who prepared mining permit which extract coal under the exemption under 30 CFR Part 702:

Mr. James Turner
James Turner Consulting
4235 Settle Brook Trail
Owensboro Kentucky 42323

Mr. Lantz G. Ranklin
Heritage Technical Associates
Route 119 and Hurricane Branch
Chapmanville, West Virginia 25508

Both companies stated that the information required to be maintained under this section is already kept as part of their normal business activities; therefore, there is no information collection burden for maintaining the information. However, notifying the SRA of cessation of operations requires approximately 1 hour.

Also, OSM staff contacted staffs of State regulatory authority who review, process and issue the mining permit which extract coal under the exemption for 30 CFR Part 702:

Mr. Ernie Ashby
Illinois Department of Natural Resources
Office of Mines and Minerals
Land Reclamation Division
One Natural Resources Way
Springfield, Illinois 62701

(217) 782-6791

Mr. Dave Phillips
Indiana Department of Natural Resources
Division of Reclamation
R.R. #2, Box 129
Jasonville, Indiana 47438
(812) 665-2207

Neither regulatory authority expressed concerns with this recordkeeping requirement.

On December 8, 2006, OSM published in the Federal Register (71 FR 71189) 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. No payments or gifts are awarded to respondents.
10. Confidential information may be withheld for public inspection upon approval of the SRA.
11. Not applicable. No sensitive information is required.
12. Reporting and Reviewing burden

a. Estimate of Respondent Reporting Burden

Under section 702.15(a) there will be no burden imposed. On the basis of the information obtained from representatives of companies holding an exemption, this information is kept as part of their normal business activity.

OSM anticipates that the notification requirement of section 702.15(b) when exercised will require 1 hour of effort by a respondent. This estimate is based on current experience of OSM personnel with the exemption process and discussions with those identified in item 8. Approximately 5 respondents are expected to notify the SRA during the next year that mining has been completed or coal mining activity has ceased under section 702.15(b). Therefore, the

estimated burden for respondents is 5 hours (5 operations x 1 hour per operation).

In addition, each SRA will require approximately 2 hours per operation to conduct its review of the completion of the operation and confirm according to section 702.15(b). The estimated burden for SRA is 10 hours (5 operations x 2 hours per operation).

Therefore, the burden to all respondents is approximately 15 hours (5 hours for applicants + 10 hours for SRA's).

b. Estimate of wage cost to respondents

At a rate of \$60 per hour, the total annual cost to respondents is \$300 (5 respondents x 1 hour x \$60 per hr). In addition, the total annual cost to SRA is \$450 at a rate of \$45 per hour (5 operations x 2 hours x \$45 per hour), for a total wage cost of \$750.

13. Estimated Total Annual Cost

Not applicable. There are no costs incurred beyond the hourly wage costs or minimal postage costs.

14. Estimate of Cost to the Federal Government

Oversight: It will take an average of 1 hour to review the information on the operator's exemption filed at the mine area for exemptions approved under State regulatory programs. The cost to the Federal government for oversight is estimated to cost \$45 (1 respondent x \$45 per hour).

Federal Programs: OSM will review the information on the exemption operation filed under Federal programs. It is estimated that there is 1 Federal program approved for exemption and the cost to OSM is estimated at \$45 (1 exemption X 1 hr x \$45 per hour).

Total estimated cost to the Federal government: \$90
(\$45 for oversight + \$45 for Federal programs).

15. Based on the information obtained from representatives of companies holding an exemption, respondents will require 1 hour for each of the 5 notifications, and SRA's will require

2 hours to review each.

Therefore, the total burden to respondents is 15 hours. The estimated burden for this section will increase by 6 hours due to an increase in the number of respondents, from 3 to 5.

	9	hours currently approved by OMB
+	6	hours due to an increase in respondents
	15	hours requested

- 16. There are no plans for publication of this information.
- 17. Not applicable. The OMB approval is displayed in 30 CFR 702.
- 18. Not applicable. There are no exemptions to item 19 of the OMB 83-I form.
- B. Collection of Information Employing Statistical Methods.

This section is not applicable.

Supporting Statement for Reporting and Record keeping
Requirements Under 30 CFR 702.18

A. Justification

1. Section 702.18 requires the annual reporting of the information needed by the SRA to determine continued eligibility for an incidental mining operation exemption from SMCRA. Each annual report submitted in support of the continuation of an existing exemption must contain the information specified in section 702.18.
2. The SRA's will use the information provided in the annual reports to update and maintain a record of operators who have previously applied for and been granted an exemption under section 701(28) of SMCRA. The annual reports will provide the production, sales, and other relevant data needed to update the existing information on file and will also establish that each mining area remains eligible for the exemption. In practice, the SRA's will conduct a two-tiered review process of each annual report submitted by an operator. The first tier review involves examining the annual report to determine that it is complete pursuant to 30 CFR 702.18. During this completeness review, a preliminary review of the annual report will also be made for erroneous or fraudulent information relevant to making a decision on continuation of the approved exemption, or revocation of the exemption pursuant to 30 CFR 702.17. The second tier review involves making a detailed evaluation of each annual report, and making a final written determination on whether the operation remains exempt.

Section 702.18 lists minimum information that must be included in an annual report. Section 702.18(a)(1) provides the requirement to submit a written report for each mining area.

Section 702.18(a)(2) requires the report to be filed no later than 30 days after the end of the reporting period in accordance with guidelines given in section 702.5(a) for determining a start date for the period during which production and gross revenue will be calculated. This section allows the operator to select and consistently use one of the following: (1) for mining areas where coal or other minerals were extracted prior to August 3, 1977, the

date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or (2) for mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

Section 702.18(a)(3) requires that the report cover annual and cumulative production and revenue data for coal and other minerals produced for the preceding twelve-month period.

Section 702.18(b) requires detailed information on tonnages and revenues of coal and other commercially valuable minerals sold, fair market value for coal or other minerals when used or transferred by the operator, and tonnages of coal and other commercially valuable minerals stockpiled.

Section 702.18(b)(1) requires the number of tons of coal extracted and sold and the total revenue derived from such sales. Section 702.18(b)(2) requires the number of tons of coal extracted and used or transferred by the operator or related entity and the estimated fair market value of such coal. Pursuant to section 702.18(b)(3), the number of tons of coal stockpiled must be reported in the annual, but not in the cumulative, part of the annual report. Sections 702.18(b)(4) through (6), respectively, require identical information for the commercially valuable minerals other than coal, produced in the mine area.

The SRA's will use records maintained and made available by the operator to verify the continued right to an exemption. Not collecting this information from this source would make regulation of the exemption ineffective.

The collection of all of this specific information is necessary in order for SRA's to verify that the 16 2/3 exemption from the requirements of SMCRA is not being improperly used by coal mine operators to circumvent SMCRA. Improper use of the 16 2/3 exemption has been identified by citizens, environmental organizations, SRA's and OSM itself as being an area of serious abuse of the requirements of SMCRA.

3. Requested information is normally submitted in hard copy,

although some operators submit their annual reports electronically. State regulatory authorities cannot require electronic submissions, but do recommend computer submissions.

4. This is a unique information collection, there is no duplication. No similar information is collected pertaining to exempt operations by OSM, or any other Federal agency.
5. Some of the operators filing applications and annual reports are small businesses. Information required is limited to the minimum detail necessary to determine whether the mining area operation can continue to be exempt.
6. Less frequent collection than on an annual basis would result in the SRA not being able to determine the continued eligibility for an exemption from SMCRA for incidental coal mining operations which have been granted an exemption from SMCRA. Failure to update by submitting an annual report would preclude the operator from interposing the exemption as a defense in enforcement action taken under SMCRA.
7. Guidelines in 5 CFR 1320.5(d)(2) are not exceeded.
8. During the week of October 2, 2006, OSM staff contacted representatives of two companies who extract coal under the exemption under 30 CFR Part 702:

Mr. James Turner
James Turner Consulting
4235 Settle Brook Trail
Owensboro Kentucky 42323

Mr. Lantz G. Ranklin
Heritage Technical Associates
Route 119 and Hurricane Branch
Chapmanville, West Virginia 25508

Both operators file reports quarterly with the State agency and they both estimate about 5 hours are needed per quarter for reporting. Since any quarterly report would meet the requirement as an annual report in this case, the time necessary for a quarterly report will be used for the Federally required annual report. Based on these estimations, an average burden of 5 hours for each of the 40

operators, or 200 hours was determined.

Also OSM staff contacted staffs of State regulatory authority who review, process and issue the mining permit which extract coal under the exemption for 30 CFR Part 702:

Mr. Ernie Ashby
Illinois Department of Natural Resources
Office of Mines and Minerals
Land Reclamation Division
One Natural Resources Way
Springfield, Illinois 62701
(217) 782-6791

Mr. Dave Phillips
Indiana Department of Natural Resources
Division of Reclamation
R.R. #2, Box 129
Jasonville, Indiana 47438
(812) 665-2207

The above respondents did not identify any concerns regarding the availability of data, frequency of collection, clarity of instructions and record keeping of the information collection requirements.

On December 8, 2006, OSM published in the Federal Register (71 FR 71189) 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. No payments or gifts were awarded to respondents.
10. The SRA will keep the information confidential if, at the time of submission, (1) the operator requests in writing that it be kept confidential and (2) the information concerns trade secrets or (3) the information is privileged commercial or financial information of the operator. The information may be available to the public after notice and a hearing is afforded persons both seeking and opposing disclosure of the information. All information submitted

without requesting confidentiality will be made available to the public (see justification statement for 30 CFR 702.13).

11. Not applicable. Sensitive information is not required.

12. Reporting and Reviewing burden.

a. Estimate of Respondent Reporting Burden

Pursuant to section 702.18, it is estimated that 40 respondents with exemptions will file annual reports during the next year, requiring 5 hours per report. Therefore, it is estimated that the reporting burden is 200 hours (40 operations x 5 hours per operation).

In addition, each SRA will require approximately 1 hour per operation to conduct its review of the annual report. The SRA burden is estimated to be 40 hours (40 operations x 1 hour per review).

Therefore, the burden to all respondents is approximately 240 hours (200 hours for operations + 40 hours for SRA's).

b. Estimate of wage cost to respondents

Using a rate of pay of \$60, the total cost to operator for filing annual reports is estimated at \$12,000 (40 operations x 5 hours per operation x \$60 per hour) or approximately \$300 per operation (5 hours per operation x \$60 per hour).

In addition, at a rate of pay of \$45, the total cost to SRA would be \$1,800 (40 operation x 1 hour per operation x \$45 per operation).

Therefore, the wage burden to all respondents is approximately \$13,800 (\$12,000 for operator + \$1,800 for SRA).

13. Estimated Total Annual Cost

Not applicable. There are not costs incurred beyond the hourly wage costs or minimal postage costs.

14. Estimate of Cost to the Federal Government

Oversight: It will take an average of 1 hour to review each exemption report. OSM's oversight role is to review several (4) randomly chosen of the reports submitted annually to SRA's. This is done to assure OSM that the State is fully complying with the Act and the approved regulatory program. Using a rate of pay of \$45, the cost to the Federal government for oversight is estimated to be a total of \$180 (4 report x 1 hour per report x \$45 per hour).

Federal Programs: OSM will review one annual report for exempted operations under Federal programs at an estimated cost of \$225 (1 report X 5 hour per report x \$45 per hour).

Total estimated cost to the Federal government: \$405 (\$180 for oversight + \$225 for Federal programs).

15. It is estimated that it will require respondents 5 hours per mine area being reported to complete this information collection reporting and recordkeeping requirement, based on information obtained from operators.

Based on OSM estimates, approximately 40 respondents will submit annual reports for exemption pursuant to amended State program rules which conform with 30 CFR 702.18. There will be a decrease in the estimated burden due to a decrease in respondents from 50 to 40. The total burden to respondents is estimated to be 240 hours (40 respondents X 5 hours per response + 40 hours for SRA review). The approved collection for this section will change as follows:

300	hours currently approved
- 60	hours due to a decrease in respondents
240	hours requested

16. There are no plans for publication of this information.
17. Not applicable. The OMB approval expiration date is displayed in 30 CFR 702.
18. Not applicable. There are no exemptions to item 19 of the OMB 83-I.
- B. Collection of Information Employing Statistical Methods

This section is not applicable. Statistical methods are not employed.