

Supporting Statement for Paperwork Reduction Act For 30 CFR Part 761-Areas Designated by Act of Congress

OMB Control Number 1029-0111

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.*

Introduction

The Office of Surface Mining Reclamation and Enforcement (OSM), is submitting this information collection clearance package to renew our authority to collect 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 that burden control number 1029-0111.

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), or 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 534 information collection 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.

We are now requesting 531 hours for OMB clearance number 1029-0111, a decrease of 3 hours that may be attributed to a reduction in use.

Each section of Part 761 for which there is an information collection or recordkeeping requirement is discussed separately. The responses to some items in the instructions for the supporting statement are identical for each section and appear separately. Except as otherwise noted in the supporting statements for individual sections, the respondents and potential respondents consist of 24 state regulatory authorities and approximately 314 entities engaged in surface coal mining and reclamation operations.

The following table summarizes the information collection requirements and changes to the burden hours requested for Part 761. The number of responses in this table reflects the number of instances in which each type of waiver or exception is requested. In reality, persons seeking waivers and exceptions are likely to combine all requests applicable to a proposed mine into one permit application.

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 761

| SECTION | NUMBER OF APPLICANT RESPONSES | NUMBER OF STATE RESPONSES | HOURS PER APPLICANT | HOURS PER STATE | TOTAL HOURS REQUESTED | HOURS CURRENTLY APPROVED | DIFFERENCE |
|----------------|--------------------------------------|----------------------------------|----------------------------|------------------------|------------------------------|---------------------------------|-------------------|
| 761.13 | 1 | 0 | 6 | 0 | 6 | 5 | 1 |
| 761.14 | 0 | 124 | 0 | 1 | 124 | 102 | 22 |
| 761.16 | 16 | 15 | 7 | 19 | 397 | 423 | -26 |
| 761.17 | 0 | 2 | 0 | 2 | 4 | 4 | 0 |
| TOTAL | 17 | 141 | 13 | 22 | 531 | 534 | -3 |

***Items for Which Responses Are Identical in the Supporting Statements
for All Sections of 30 CFR Part 761***

A. Justification

3. Under 30 CFR Part 761, people may submit responses electronically at the discretion of the receiving agency to the extent that submission of copies of deeds, leases, signed waivers, or other legal documents is not required. OSM continues to actively support State regulatory authorities' (SRA's) implementation of electronic submissions of permit applications and other reports normally conducted by paper. OSM currently estimates that 33% of applications are received electronically, with some SRA's in the early stages of electronic exchange, while others receive 100 % of permit applications through SRA websites or CD's.
4. The information requested under 30 CFR Part 761 is time-sensitive and unique to each person or site. Since it is collected infrequently (generally only at the time that a person requests an exception or waiver from the prohibitions and restrictions of section 522(e) of the Act), duplication is minimal to nonexistent. We are not aware of any other Federal agency that collects this information. OSM is the only Federal agency charged with implementation of section 522(e).
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 document the right to seek a permit to conduct surface coal mining operations on the lands listed in section 522(e) of the Act. Adequate documentation of this right is essential to restrict the occurrence of surface coal mining operations in those areas as Congress intended.
6. Failure to collect the information requested under 30 CFR Part 761 would impair the ability of OSM and SRA's 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. No collection of information under 30 CFR Part 761 is inconsistent with the guidelines at 5 CFR 1320.5(d)(2) as summarized in the instructions for this item of the supporting statement.
8. In August 2008, OSM contacted the following respondents to obtain their comments on the information collection burden imposed by Part 761 regulations:

Richard Wahrer
Environmental Scientist
Division of Mine Reclamation and Enforcement
2 Hudson Hollow Road
Frankfort, KY 40601
Telephone: (502) 564-2320

Larry D. Adams, PE
Senior Vice-President
Environmental Resources Management Consulting, LLC
2265 Harrodsburg Road
Suite 200
Lexington, KY 40504
Telephone: (859) 381-1000

Gerald Waddle
Hydrologist
OSM, Knoxville Field Office
710 Locust Street, 2nd floor
Knoxville, TN 37902
Telephone: (865) 545-4103 x182

Bill Allen
Chief, Division of Monitoring and Compliance
Bureau of Mining and Reclamation
PO Box 8461
Harrisburg, PA 17105
Telephone: (717) 783-9580

These individuals provided burden estimates for the sections discussed below. None of them expressed concerns with the availability of data, frequency of collection, clarity of instructions, nor data elements reported.

On September 3, 2008, OSM published in the Federal Register (73 FR 51514) 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. Neither we nor the state regulatory authorities provide payments or gifts to respondents.

10. While §§ 507(b)(17), 508(a)(12), and 508(b) of SMCRA require that certain types of permit application information may be kept confidential, 30 CFR 773.13(d) specifies that each permit application must be available for public inspection. The applicant has the right to request confidentiality for certain types of information in the application, such as analyses of the physical and chemical properties of the coal and the location of archaeological resources. This rule extends these confidentiality provisions to requests for VER determinations in §761.16.
11. Not applicable. There are no questions of a sensitive nature.
12. The estimated wage costs were derived from U.S. Department of Labor's Bureau of Labor statistics (BLS) for mining companies found at http://www.bls.gov/oes/current/naics4_212100.htm and were rounded. The estimated wage costs to State employees were found on the BLS website at http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000. We have included benefits based on a multiplier of 1.4 times the wage costs for private industry, and 1.5 multiplier for State employee wage costs. These benefits multipliers are derived from a BLS news release which may be found at http://www.bls.gov/news.release/archives/ecec_12112007.pdf.):
14. Federal wage costs were derived from the Office of Personnel Management's wage table found at http://www.opm.gov/oca/08tables/html/g_s_h.asp. We have included benefits based on a multiplier of 1.5 times the wage costs for Federal employees based on the BLS news release found at http://www.bls.gov/news.release/archives/ecec_12112007.pdf.).
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. Not applicable. There are no exceptions to the "Certification for Paperwork Reduction Act Submissions."

Supporting Statement for 30 CFR 761.13 – Procedures for compatibility findings for surface coal mining operations on Federal lands in national forests.

A. 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 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) 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, §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 §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 VER or an existing operation.

2. OSM and SRA's use the information collected under §761.13 to ensure that persons who conduct or intend to conduct surface coal mining and reclamation 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 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 and we have not received any requests for compatibility findings independent from a permit application for the past few years. However, assuming we will receive 1 application per year, we estimate that each person submitting a request will need an average of 6 hours to compile the necessary information and prepare the request. Accordingly, the total annual information collection burden for respondents under §761.13 is estimated to be **6 hours** (1 request x 6 hours per request).

b. Estimated Annual Wage Cost to Respondents

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

| Industry Wage Cost | | | |
|---------------------------|---------------------------------|--|-------------------------------|
| Position | Hour Burden per Response | Cost per Hour (\$) (including benefits) | Total Wage Burden (\$) |
| Clerical | 1 | 20 | 20 |
| Environmental Engineer | 5 | 49 | 245 |
| Total | 6 | | 265 |

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

Therefore, the estimated total annual wage cost for the industry respondent for §761.13 is \$265. The total wage cost to all industry respondents is \$265 x 1 compatibility finding = \$265.

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

There are no significant or distinct non-wage operations or maintenance costs associated with compliance with the information collection requirements of §761.13.

14. Estimate of Annualized Cost to the Federal Government

We estimate that each request for a compatibility finding on the average requires 60 hours to process. At an average wage rate of \$47 per hour (GS 12/5 regulatory program specialist/engineer reviewing the application including benefits), the annual cost to the Federal government to process this request is \$2,820.

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

15. The previously approved authority for §761.13 included 5 hours for this activity. Although we have not received any applications recently, we are now requesting 6 hours for this section to correspond to 1 application request. This increase of 1 hour is based on consultations with the individuals listed in item 8.

5 hours currently approved by OMB
+ 1 hours due to an adjustment
6 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.

***Supporting Statement for 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.***

A. 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 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 SRA's use the information collected under §761.14 to ensure that persons who conduct or intend to conduct surface coal mining and reclamation 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 SRA 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).

Based upon data provided by individuals provided in Item 8, and our experience as a regulatory authority, the number of waivers requested can vary widely. In the large majority of cases we estimate that one out of three (0.33) permit applications will request a waiver, but in some cases there can be as many as two per permit application, depending on local circumstances. Therefore, we estimate that the ratio of public road buffer zone waivers under 30 CFR 761.14 to the total number of permits issued for surface coal mining operations will be 0.4.

Based on the agency's state-specific annual evaluation reports for the 2007 evaluation year, OSM estimates that the 24 SRA's issued 309 new permits each year (there were an additional 5 permits issued in Federal program States and Indian tribes). Because the level of mining varies greatly from State to State, the level of permitting activity exhibits a similar variation. For the 2007 evaluation year, the actual number of new permits issued in primacy States ranged from 0 in 11 States to 102 in Kentucky.

At the estimated ratio of 0.4 waivers per permit issued, SRA's will need to prepare written findings for 124 public road buffer zone waivers each year (0.4 x an estimated 309 new permits per year). Assuming that each finding requires an average of 1 hour to prepare, the burden to the 24 SRA's will be **124 hours** (124 findings x 1 hour per finding) per year.

b. Estimated Annual Wage Cost to Respondents

We estimate that the wage costs to State engineering technicians to be \$31 per hour (rounded and including benefits). Therefore, the estimated total annual wage cost for SRA's to prepare the written findings for the public road buffer zone waivers in §761.14 is \$31 per hour x 1 hour x 124 findings = \$3,844.

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

13. Total Annual Non-Wage Cost Burden to Respondents

a. Annualized Capital and Start-Up Costs

The information collection requirements of §761.14 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.

14. Estimate of Annualized 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 state compliance with the requirements of §761.14 in the absence of any indication of programmatic problems. Assuming that we will conduct an oversight review of this topic in one State program per year and that each review requires an average of 40 hours at \$47 per hour (GS 12/5 regulatory program specialist/engineer reviewing the application, including benefits). The annual cost to the Federal government for this oversight activity is estimated to be \$1,880.

Federal Programs: Based upon data from the agency's state-specific annual evaluation reports for the 2007 evaluation year, we estimate that we will annually

issue approximately 5 new permits for lands and operations for which we are the regulatory authority. Based on our experience as a regulatory authority, we estimate that we will annually receive 1 request for public road buffer zone waivers. At the wage rate of \$47 per hour, the annual wage cost to the Federal government to prepare written findings for these waivers will be \$47 (1 finding x 1 hour per finding x \$47 per hour). There are no significant non-wage costs associated with preparing these findings.

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

Total Federal Cost:

\$ 1,880 Oversight
+ 47 Federal programs
\$ 1,927 Total Federal cost

15. The 124 burden hours that we are requesting for §761.14 represent an increase of 22 hours from the 102 hours previously approved for this activity. The difference is due to an increase in the number of new permits for which findings are required, based on consultations with the individuals listed in item 8.

102 hours currently approved by OMB
+ 22 hours due to an adjustment
124 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.

Supporting Statement for 30 CFR 761.15

A. 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 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 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 signed waivers to conduct surface coal mining operations within the buffer zone of occupied dwellings 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.

Supporting Statement for 30 CFR 761.16 - Submission and processing of requests for valid existing rights determinations.

A. 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 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 761.16 establishes submission, public notice, and processing requirements for requests for valid existing rights (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 valid existing rights 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 SRA's will use the information collected under §761.16 to ensure that persons who conduct or intend to conduct surface coal mining and reclamation operations on the lands listed in section 522(e) of the Act under the VER exception actually have VER. Members of the public will 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 permits issued for surface and underground coal mining operations will contain a VER determination request, with two-thirds, or 67% of those determinations involving occupied dwellings. The agency's state-specific annual evaluation reports for the 2007 evaluation year show that we and the 24 SRA's issued 314 new permits which translate to approximately 16 requests for VER determinations per year (0.05 x 314 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 operations, 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 **96 hours** (16 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

16 hours (1 notification per request x 1 hour per notification x 16 requests per year).

Hence, we estimate that the total annual information collection burden for persons requesting VER determinations under §761.16 will be **112 hours** (96 + 16).

Burden on State Regulatory Authorities

The agency's State-specific annual evaluation reports for the 2007 evaluation year show that the 24 SRA's issued 309 new permits. This translates to 15 requests for VER determinations per year for SRA's based on the calculations discussed earlier (0.05 x an estimated 309 permits issued per year by SRA's), and one determination request for us on Federal lands where we are the regulatory authority.

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, although, as indicated by the survey in Item 8, the actual time may vary considerably

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 requiring 1 hour to prepare.
- 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 detailed 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 SRA's for compliance with the information collection requirements of 30 CFR 761.16 will total **285 hours**, broken out as follows:

- 45 hours for administrative completeness reviews under §761.16(c) (3 hours per review x 15 requests per year).
- 30 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 15 requests per year].
- 90 hours for transmittal of copies of newspaper notices to surface and mineral owners of the land in question and to owners of and any agency with jurisdiction over protected features also required by §761.16(d) and (e) [6 transmittal letters per request (3 for the notice of receipt and 3 for the decision notice) x 1 hour per transmittal letter x 15 requests per year].
- 60 hours for reviews of the merits of requests required by §761.16(e) (4 hours per review x 15 requests per year).
- 60 hours for preparation of written decision documents (1 document per request x 4 hours per document x 15 requests per year).

Total Burden

For all respondents, we estimate that the total annual information collection burden for §30 CFR 761.16 would be **397 hours** (112 hours for persons requesting VER determinations and 285 hours for SRA's).

b. Estimated Annual Wage Cost to Respondents

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

| Industry Wage Cost | | | |
|------------------------|--------------------------|---|-------------------------------------|
| Position | Hour Burden per Response | Cost per Hour (\$) (including benefits) | Total Wage Burden per Response (\$) |
| Clerical | 2 | 20 | 40 |
| Environmental Engineer | 5 | 49 | 245 |
| Total | 7 | | 285 |

Therefore, the estimated total annual wage cost for each industry respondent for §761.16 is \$285. The total wage cost to all industry respondents is 285×16 permits = \$4,560.

In addition, it takes 19 hours (285 hours total / 15 responses) for each SRA to review this section of the permit application.

We estimate that the wage costs to State engineering technicians to be \$31 per hour (rounded and including benefits). Therefore, the estimated annual wage cost for SRA's to prepare each written finding for the public road buffer zone waivers in §761.16 is $\$31 \text{ per hour} \times 19 \text{ hours} = \589 , and the total to prepare all written findings is $\$589 \times 15 \text{ findings} = \$8,835$.

Therefore, we estimate that the burden to all respondents is \$4,560 for industry + \$8,835 for SRA's = \$13,395.

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

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, the only significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of §761.16 is the delivery and office supply

costs for the notification letters to owners of other property interests in the land to which the request pertains, plus copying costs for the comments received in response to this notification. We estimate that these costs will average \$4 per letter, for a total cost of \$64 (1 notification per request x \$4 per notification x 16 requests per year).

For SRA's, the only significant or distinct non-wage operation or maintenance costs associated with compliance with the information collection requirements of §761.16 are the delivery and office supply costs for the 6 transmittal letters required for the average request for a VER determination, and the publication costs for the 2 newspaper notices required for the average request. We anticipate that publication of a newspaper notice will cost an average of \$75 per notice, and that the regulatory authority will incur an estimated \$4 in copying and office supply costs and delivery charges for each transmittal letter. Therefore, we estimate that the 24 SRA's will incur annual publication expenses of \$2,250 (2 notices per request x 15 requests per year x \$75 for publication of each notice) and transmittal letter expenses of \$360 (6 letters per request x 15 requests per year x \$4 per letter), for total annual costs of \$2,610 .

Hence, we estimate that non-wage operation or maintenance costs associated with compliance with the information collection requirements of §761.16 will total \$2,674 (\$64 for persons requesting VER determinations + \$2,610 for the 24 SRA's).

14. Estimate of Annualized 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 state compliance with the requirements of §761.16 in the absence of any indication of programmatic problems. Assuming that we will conduct an oversight review of this topic in one State program per year and that each review requires an average of 40 hours at \$47 per hour (GS 12/5 regulatory program specialist/engineer reviewing the application, including benefits). The annual cost to the Federal government for this oversight activity is estimated to be \$1,880.

Federal Programs: Based upon data from the agency's state-specific annual evaluation reports for the 2007 evaluation year and our discussion above, SRA's receive 15 requests for VER determinations and we receive 1 for lands for which we are the regulatory authority. For each request, we must prepare and publish a Federal Register notice announcing receipt of the request for a VER determination for Federal lands and another notice announcing our decision on the request.

Assuming 1 new permit each year, processing this request in accordance with the requirements of §761.16 would require a total of 35 hours, broken out as follows:

- 2 hours for newspaper notices.
- 6 hours for transmittal of copies of newspaper notices to surface and mineral owners of the land in question and to owners of and agency with jurisdiction over protected features.
- 3 hours for the administrative completeness review under §761.16(c) .
- 4 hours for review of the merits of request.
- 4 hours for preparation of written decision document.
- 16 hours for preparation, review, and approval of Federal Register notice.

At an average salary of \$47 per hour, the annual wage cost to the Federal government to process requests for VER determinations under §761.16 would be \$1,645 (35 hours x \$47 per hour).

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

Non-wage costs consist of publication expenses for newspaper and Federal Register notices and copying, office supply, and delivery charges associated with the required transmittal letters. These costs total \$1,174, broken out as follows:

- \$150 for newspaper notices [2 notices per request (the notice of receipt and the decision notice) x \$75 per notice x 1 request per year].
- \$1,000 for Federal Register notices [2 notices per request (the notice of receipt and the decision notice) x \$500 per notice x 1 request per year].
- \$24 for mailing transmittal letters and copies of newspaper notices to surface and mineral owners of the land in question and to owners of and agencies with jurisdiction over protected features [6 transmittal letters per request (3 for the notice of receipt and 3 for the decision notice) x \$4 per transmittal letter x 1 request per year].

Total Federal Cost:

\$ 1,880 Oversight

+ 1,645 Federal programs
+ 1,174 Non-wage costs
\$ 4,699 Total Federal cost

15. We are now requesting a decrease of 26 hours, for a new burden of 397 hours from 423 hours. This decrease results primarily from a reduction in use.

423 hours currently approved by OMB
- 26 hours due to an adjustment
397 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.

Supporting Statement for 30 CFR 761.17- Regulatory authority obligations at time of permit application review.

A. 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 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)(3) provides that a person may conduct surface coal mining operations that will adversely affect a publicly owned park or place included on the National Register of Historic Places if the operations are approved jointly by the regulatory authority and the governmental agency with jurisdiction over the park or place. To implement this provision, §761.17(a) requires the review conducted under §761.16. Section 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. Section 761.17(c) provides that, if the regulatory authority has difficulty determining whether a proposed operation is located on certain land 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 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 SRA's use the information collected under §761.17(c) and (d) to ensure that persons who conduct or intend to conduct surface coal mining and reclamation 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. Since we anticipate that this pattern of nonuse will continue, 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. Therefore, we estimate that the total annual information collection burden for §761.17(c) will be **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 in which a SRA used the joint approval provisions of §761.17(d) to conduct surface coal mining operations that would adversely affect publicly owned parks, wildlife refuges, scenic rivers or other National scenic places. We know of no other use of these provisions. Since we anticipate that this pattern of nonuse will continue, 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. Therefore, we estimate that the total annual information collection burden under 30 CFR 761.17(d) will be **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) and 2 hours for §761.17(d)].

b. Estimated Annual Wage Cost to Respondents

We estimate that the wage costs to State engineering technicians to be \$31 per hour (rounded and including benefits). Therefore, the estimated total annual wage cost for SRA's to prepare the letter and copy relevant portions of the permit application under §761.17 is \$31 per hour x 4 hours = \$124.

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

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 are the delivery and office supply costs for the two transmittal letters that we estimate that the state regulatory authorities will prepare each year under that section [one for paragraph (c) and one for paragraph (d)]. We expect that the regulatory authority will incur an estimated \$4 in copying and office supply costs and delivery charges for each transmittal letter. Therefore, we estimate that the 24 SRA's (as a group) will incur annual expenses of **\$8** (2 letters per year x \$4 per letter).

14. Estimate of Annualized Cost to the Federal Government

Oversight: In keeping with the current guidance concerning oversight of state program implementation, which de-emphasizes process reviews, we do not anticipate conducting any significant oversight review of state compliance with the requirements of §761.17 in the absence of an indication of problems. We do

not anticipate conducting an oversight review of this topic in any state in the near future.

Federal Programs: Over the last three years, there has been one reported instance requiring joint approval under 30CFR 761.17, in a Federal program state.

To implement this provision, we will need an average of 2 hours to prepare the letter and copy and transmit relevant portions of the permit application.

At the wage rate of \$47 per hour, the annual wage cost to the Federal government to process the joint approval provisions of 30 CFR 761.17 would be \$94 (2 hours x \$47 per hour).

(See list of items with identical responses for discussion of wage costs and benefits multipliers found on page 9).

Total Federal Cost:

\$ 0 Oversight
+ 94 Federal programs
\$ 94 Total Federal cost

15. We are requesting a total annual information collection burden of **4 hours** for §761.17 which is currently approved by OMB. Therefore, the collection estimate for §761.17 does not change.
16. See list of items with identical responses.
17. See list of items with identical responses.
18. See list of items with identical responses.