

1Supporting Statement A
30 CFR Part 761—
Areas Designated by Act of Congress
OMB Control Number 1029-0111

Terms of clearance: None

Introduction

We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are submitting this information collection clearance package to renew our authority to collect information and require recordkeeping under 30 CFR Part 761, Areas Designated by Act of Congress. The Office of Management and Budget (OMB) previously reviewed and approved the collection of information and recordkeeping requirements under this part, assigning it 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), 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 2,795 burden hours for 30 CFR Part 761. We are now requesting 1,458 hours, a decrease of 1,337 hours. This reduction in burden directly reflects the decline in application requests for mining on sensitive lands as market conditions have weakened making it less economically feasible for mining on these lands. The respondents consist of the 23 state regulatory authorities and persons who desire to mine coal on lands on which surface coal mining operations are otherwise prohibited under section 522(e) of SMCRA.

General Instructions

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

the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.*

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

- 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.*

Section 761.13:

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

Section 761.14:

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

Section 761.15:

OSMRE and state regulatory authorities use the information collected under §761.15 to ensure that persons who conduct or intend to conduct surface coal mining operations on the lands listed in section 522(e)(4) of the Act meet the statutory criteria by obtaining a written waiver from the dwelling's owner. State regulatory authorities use §761.15 to determine that the applicant is eligible to obtain a permit to conduct surface coal mining operations on the lands listed in section 522(e)(4) of the Act.

Section 761.16:

OSMRE and state regulatory authorities use the information collected under §761.16 to ensure that persons who conduct or intend to conduct surface coal mining operations on the lands listed in section 522(e) of the Act under the VER exception actually have VER. Members of the public use the public notices required by §761.16 to gain knowledge of, and provide input on, proposals to conduct surface coal mining operations on the lands listed in section 522(e) of the Act.

Section 761.17:

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

3. *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.*

We encourage, but do not require, the use of electronic information collection and submission techniques whenever appropriate and feasible. We provide training, software, and technical assistance to states to promote the use of electronic information technology systems. OSMRE currently estimates that 75% of applications are received electronically, with some State regulatory authorities in the early stages of electronic exchange, while others receive 95% of permit applications on CD's or are directly downloaded to the State-run internet server. Applicants realize some cost reductions due to electronic submission of data through eliminating reproduction costs and postage.

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.*

The information collection requirements of 30 CFR Part 761 do not duplicate information collection requirements under other laws and regulations. OSMRE is the primary federal agency charged with implementation of section 522(e) of SMCRA. As required by SMCRA, our rules are structured to maximize coordination with other agencies and minimize duplication.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

There are no special provisions for small businesses or other small entities. Special provisions are not appropriate because the requested information is the minimum needed to ensure that surface coal mining operations do not occur in areas in which they are prohibited or to document that all necessary waivers have been obtained with the appropriate degree of opportunity for public participation.

6. *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.*

Failure to collect the information requested for 30 CFR Part 761 would impair the ability of SMCRA regulatory authorities to ensure that surface coal mining operations on the lands listed in section 522(e) of the Act are conducted only under the circumstances set forth in the Act. Furthermore, the Act specifically requires some of the requested information.

7. *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.*

This collection of information conforms with the guidelines in 5 CFR 1320.5(d)(2); i.e.,

30 CFR Part 761 does not require that collection of information be conducted in a manner that—

- requires respondents to report information to the agency more often than quarterly;
- requires respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requires respondents to submit more than an original and two copies of any document;
- requires respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- in connection with a statistical survey, is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requires the use of a statistical data classification that has not been reviewed and approved by OMB;
- includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requires respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific

situation. These circumstances should be explained.

We provided a concise description of the type of information collection burden imposed by 30 CFR Part 761, the currently approved burden, and proposed wage and nonwage burden estimates, along with a request for input on the associated information collection requirements and any other comments they wished to make regarding the clarity of the rules and potential burden. Contacts were made with the following:

Railroad Commission of Texas
Surface Mining & Reclamation
1701 N. Congress
Austin, Texas 78701

North Dakota Public Service Commission
Reclamation & AML Division
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Tribal and State Programs Support
OSMRE Tulsa Field Office
1 West Third Street, Suite 1600, Tulsa, OK 7410

Farrell-Cooper Mining Company (FCMC)
6001 South Zero
Fort Smith, AR 72917

Burden estimates for the sections discussed below are based on input from contacts and our experience as the regulatory authority in Oklahoma, Tennessee, Washington, and on Indian lands. There were no concerns expressed with the availability of data, frequency of collection, clarity of instructions, or data elements reported.

On March 5, 2024, OSMRE published in the Federal Register (89 FR 15894) 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. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

We provide no payments or gifts to respondents.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

Sections 507(b)(17), 508(a)(12), and 508(b) of SMCRA require that certain types of permit application information be kept confidential when the permit applicant so requests. The Archeological Resources Protection Act of 1979, 16 U.S.C. 470, requires that information on the nature and location of archeological resources on public lands and Indian lands be kept confidential. These provisions apply to requests for VER determinations under 30 CFR 761.16.

11. *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.*

There are no questions of a sensitive nature.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

** Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*

** If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.*

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

- a. Burden Hour Estimates for Respondents

Annual permitting actions for surface mine lands particularly land involving sensitive areas have been substantially reduced in the past three years. Although the compliance requirement and associated burden per response has remained unchanged, weaker market conditions have made it less economically and pose additional risks and uncertainty for mining on these lands. This has curtailed application requests. The table (below) summarizes the information collection requirements and changes to the current collection burden for 30 CFR part 761. The number of responses is determined by number of expected new permits and permit revisions in proximity to sensitive areas. Previously, OSMRE estimated 67 surface mine request applications per year for sensitive lands. This has now been updated to 30 applications based on actual average frequency (2021 -2023). As a result, annual burden declines by 1,337 hours.

Summary of Annual Burden to Respondents for 30 CFR Part 761							
Section	Number of Industry Responses	Hours per Industry Response	Total Industry Hours	Number of State Responses	Hours per State Response	Total State Hours	Total Hours
761.13	1	23	23	0	0	0	23
761.14(c)	30	16	480	27	4	108	588
761.15	30	15	450	27	1	27	477
761.16	6	40	240	6	21	126	366
761.17	0	0	0	2	2	4	4
Total	67		1,193	62		265	1,458

Summary of Change in Annual Burden			
Section	Requested hours	Hours currently approved	Change
761.13	23	23	0
761.14(c)	588	1,332	-744
761.15	477	1,070	-593
761.16	366	366	0
761.17	4	4	0
Total	1,458	2,795	-1,337

b. Estimated Annual Wage Cost to Respondents

OSMRE uses the U.S. Department of Labor’s Bureau of Labor Statistics (BLS) figures for calculating cost burden placed on respondents. Industry wages for occupation are found at http://www.bls.gov/oes/current/naics4_212100.htm. State government wages are found at http://www.bls.gov/oes/current/naics4_999200.htm.

Benefits are included in these wage calculations using a rate of 1.4 of the salary for industry personnel, and 1.6 for state employees per the BLS news release USDL-24-1172, dated June 18, 2024, Employer Costs for Employee Compensation – March 2024(<http://www.bls.gov/news.release/pdf/ecec.pdf>).

Industry wages is based on two occupational job series (administrative support and mining engineer). Applying wage costs including benefits totals \$73,010 (262 hours x \$34.10 + 931 hours x \$68.82 per hour), as shown below.

Industry Wage Costs

Occupation (BLS)	Hourly (BLS) wage rate \$	Hourly rate \$ w/benefits (1.4)	Workload hours	Wage cost \$
Administrative support	24.36	34.10	262	8,935
Mining engineer	49.16	68.82	931	64,075
Total			1,193	73,010

State regulatory wage rates are represented by the occupation category for a state mining engineer involved in the majority work for sections 761.14 and 761.16. Using BLS wage rate for this position, we estimate that the wage cost is \$103.17 per hour (\$64.48 x 1.6) including benefits. Based on burden hour estimates it requires state regulatory authorities 265 hours annually to review and satisfy requirements for mining decision for Part 761. Using the above wage estimate, the total wage cost to all state regulatory authorities is \$27,340 (\$103.17 x 265 hours).

Therefore, in summary the estimated annual wage cost for all respondents is \$100,350 (\$73,010 for industry + \$27,340 for state regulatory authorities).

13. *Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)*
- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.*
 - * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*
 - * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

Total Annual Non-Wage Cost Burden to Respondents

a. Annualized Capital and Start-Up Costs

The information collection requirements of 30 CFR 761 do not involve any capital or start-up costs apart from expenditures associated with customary business practices.

b. Operation and Maintenance Costs

Based on input with contacts (listed in item 8), we estimate non-wage operation and maintenance costs to the industry for compliance with the information collection requirements of 761.13 – 761.17. Expenses are required for travel to the courthouse and potential mining sites as well as for certain analytical and mapping costs (for section 761.12-.15). We estimate these costs at \$120 per application request.

State regulatory authorities incur distinct non-wage operation or maintenance costs associated with compliance requirements of 761.16. Specifically, the publication costs for the 2 newspaper notices required for each request for a VER determination. Based on our experience and consultation (listed in item 8), we estimate that publication of a newspaper notice will cost an average of \$75 per notice. Therefore, the state regulatory authorities will incur total annual non-wage expenses of **\$900** (2 notices per VER request x 6 VER requests per year x \$75 for publication of each notice).

Based on the above total annual non-wage cost amounts for all sections amounts to \$8,220.

Section	Operation and Maintenance Costs per Application Request	Number of Application Request	Total Nonwage Cost \$
761.13	120	1	120
761.14(c)	120	30	3,600
761.15	120	30	3,600
761.16	75	12	900
Total		73	8,220

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.*

Estimate of Annualized Cost to the Federal Government

Oversight hours: There is no established frequency for conducting oversight reviews of state compliance with the requirements of 30 CFR 761.13 – 761.17. When OSMRE conducts an oversight review on each topic of a state program, that review would require an average of 40 hours (sections 761.13 – 761.16 and 20 hours for section 761.17). Therefore, total federal oversight hours amount to 180 hours annually (see table below).

Federal programs hours: OSMRE is the regulatory authority for all operations under the Federal regulatory programs in states without approved regulatory programs for Oklahoma, Tennessee, and Washington and on Indian lands.

Based upon data for the 2022 and 2023 fiscal years, we estimate that OSMRE will receive approximately 2 new permits or permit revisions adding acreage for lands and operations annually.

Based on previous request for section 761.14 OSMRE's will spend 12 hours to achieve compliance tasks and 4 hours for section 761.15 for waiver requests processing and administering a notice.

OSMRE is responsible for making VER determinations for the lands listed in paragraphs 30 CFR 761.11(a) and (b) [paragraphs (e)(1) and (2) of section 522 of SMCRA], regardless of whether if it is the regulatory authority. Based on historical data, we receive at most one request per year for a VER determination for lands for which we are the regulatory authority requiring an average of 20 hours to process. Provisions 761.17(c) or (d) have required infrequent application but typically require 4 hours annually [2 hours for §761.17(c) + 2 hours for §761.17(d)].

Federal Lands: OSMRE has responsibility on Federal lands and receives one request per year for a VER determination for lands protected under 30 CFR 761.11(a) or (b) for Federal lands, including National parks and Forests. These types of requests generally are complex requiring extensive review amounting to approximately 60 hours annually.

Summary Federal Government Hours by Program and Section

Section	Oversight hours	Federal program hours	Federal Lands hours	Total
761.13	40			40
761.14(c)	40	12		52
761.15	40	4		44
761.16	40	20	60	120
761.17	20	4		24
Total	180	40	60	280

OSMRE uses Federal hourly wage cost from the Federal employee pay tables from the Office of Personnel Management’s website at: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/RUS_h.pdf. We include a 1.6 multiplier for benefits as discussed in the BLS news release USDL-24-1172.

Hourly wage cost is based on a representative wage rate for a GS-13/step 5 (technical specialist/physical scientist). The base wage rate (in 2024) is \$56.16 per hour or \$89.86 per hour with benefits (including a 1.6 multiplier for benefits). Therefore, Federal government wage cost is \$25,071 (280 hours x \$89.86/hour).

Nonwage Federal Costs:

There are no significant non-wage costs associated with the notice and findings for section 761.13 and 761.15. Section 761.14 requires request for a public hearing on a waiver request for public roads. The nonwage cost incurred is \$400 to publish the public notices in newspapers and media announcements. Non-wage costs associated with 761.16 requires publication of two newspaper notices, totaling \$150 per year (2 notices per request x \$75 per notice x 1 request per year), or \$1,361 for the total cost for Federal program states. For requests located on protected lands including National parks and Forests it requires two notices in the Federal Register. Typically, VERs of this type require notices that are at least 2 pages long. Annual cost for publication is typically \$2,150. Therefore, total annual nonwage cost to the Federal government is \$3,911.

Summary Nonwage Federal Government Cost

Section	Federal Programs \$	Federal Lands \$	Total \$
761.14(c)	400		400
761.16	1,361	2,150	3,511
Total	1,761	2,150	3,911

In summary total Federal government cost is \$28,982 (\$25,071 wage cost + \$3,911 nonwage cost).

15. *Explain the reasons for any program changes or adjustments in hour or cost burden.*

We are requesting 1,458 burden hours, a decrease from 2,795 hours due to the decrease in annual requests for permitting on sensitive lands from 67 to 30, to reflect changing market conditions in mining.

2,795 hours currently approved by OMB
 - 1,337 hours due to an adjustment
 1,458 hours

Nonwage cost decreased from \$17,000 to \$8,220 a decrease of \$8,880 as a result of fewer permitting request on sensitive lands.

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.*

We have no plans to publish the information collected.

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.*

We are not seeking a waiver from the requirement to display the expiration date of the OMB approval of the information collection.

18. *Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

There is no exception to the "Certification for Paperwork Reduction Act Submissions."