

Supporting Statement

30 C.F.R. §§ 44.9, 44.10, and 44.11 Petitions for Modification of Mandatory Safety Standards - Pertains to all mines.

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.

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(c), provides that a mine operator or a representative of miners may petition the Secretary to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary of Labor (Secretary) determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

Under 30 C.F.R. § 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 C.F.R. § 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Assistant Secretary of Labor for Mine Safety and Health, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 C.F.R. § 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which

a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

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.

Promptly upon receipt of a petition, MSHA publishes a notice in the Federal Register advising interested parties that they may provide comments or other relevant information on the proposed modification. Thereafter, MSHA conducts an investigation to determine the merits of the petition for the purpose of deciding whether or not to grant it and, if granted, whether there is a need for any additional terms or conditions.

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.

In order to comply with the Government Paperwork Elimination Act, mine operators may retain the records in whatever method they chose, which may include utilizing computer technology.

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.

A petition for modification is unique to each mine. There is no similar or duplicate information that could be used. Also, the specific information required in a petition is readily available to the petitioner.

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.

The provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act) and the regulations promulgated thereunder apply to all operations, regardless of size, because accidents, injuries, and illnesses occur at all mines. Congress intended that the law be enforced at all mining operations within MSHA's jurisdiction regardless of their size, and that information collection and recordkeeping requirements be consistent with efficient and effective enforcement of the Act. See S. Rep. 181, 95th Cong., 1st Sess. 28 (1977). However, Congress did recognize that small operations may face problems in complying with some provisions of the Mine Act. Section 103(e) of the Mine Act directs the

Secretary of Labor not to impose an unreasonable burden on small businesses in obtaining any information under the Act. Accordingly, the agency takes this into consideration when developing regulatory requirements, and when appropriate and consistent with ensuring the safety and health of the nation's miners, different requirements for small and large operations exist. See, for example, 30 C.F.R. §§ 49.3 and 50.11(b). However, MSHA does not believe that providing separate and distinct information collection requirements for small mines in regard to the filing of petitions for modification would promote the Mine Act's objective of ensuring a safe and healthful environment for the miners.

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.

Each petition for modification must be investigated by MSHA on a mine-by-mine basis and a decision reached on the merits. A mine operator may only request modification of one mandatory safety standard per petition. However, a mine operator may file a petition for more than one mine by showing that identical issues of law and fact exist for each mine.

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 secret, 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.

While there is no specific requirement that petitions for modification be maintained for more than three years, a copy of the petition must be kept at the mine and a copy posted at the mine bulletin board for as long as the petition is in effect. Otherwise, the requirements under these standards are consistent with the general information collection guidelines in 5 C.F.R. § 1320.5.

8. If applicable, provide a copy and identify the data 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 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 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.

MSHA will publish the proposed information collection requirements in the Federal Register, notifying the public that these information collection requirements are being reviewed in accordance with the Paperwork Reduction Act of 1995, and giving interested persons 60 days to submit comments.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

MSHA has made no decision to provide payment or gifts to the respondents identified by this collection.

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

There is no personal information requiring confidentiality.

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 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 13.

According to MSHA records, an average of 140 petitions for modification per year were received during the last three years. It is estimated that approximately 110 of those petitions were prepared by mine operators. MSHA estimates that it takes a mine operator approximately 40 hours to prepare a petition for modification:

Burden hours:

$$110 \text{ petitions} \times 40 \text{ hours/petition} = 4,400 \text{ hours}$$

Burden hour cost:

$$4,400 \text{ hours} \times \$40 \text{ per hour (estimated)} \\ \text{wage rate of mine management personnel}) = \$176,000$$

MSHA believes that the burden on mine operators to post copies at the mine is minimal and has assigned no cost burden to these requirements.

13. Provide an estimate of the total annual 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. 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.

MSHA estimates that approximately 30 petitions for modification were prepared by independent legal counsel, and that it takes approximately 40 hours to prepare a petition:

| | | |
|--|---|-------------|
| 30 petitions x 40 hours/petition | = | 1,200 hours |
| 1,200 hours x \$125 per hour (estimated salary of legal counsel) | = | \$150,000 |

Estimated mailing costs for petitions for modification:

| | | |
|----------------------------------|---|--------|
| 140 petitions x \$3 per petition | = | \$ 420 |
|----------------------------------|---|--------|

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.

MSHA estimates that the initial processing and preparation of a Federal Register notice announcing that a petition for

modification has been filed by a mine operator takes an administrative staff person approximately three hours to prepare:

140 notices x 3 hours/notice = 420 hours

420 hours x \$20 per hour (estimated salary of MSHA administrative staff (GS 11/4) person) = \$ 8,400

Mailing costs:

140 notices x \$3 per notice = \$ 420

The cost for publication of the notice of receipt and summary of petitions granted in the Federal Register is approximately \$126 per column. Petition-related notices average 3 petitions per column.

140 petition notices x 0.33 columns/notice x \$126 per column = \$ 5,822

Of the 140 petitions for modification that are filed, MSHA estimates that 85% of those (119) are approved. The cost of publishing notices of approved petitions is as follows:

119 petition notices x 0.33 columns/notice X \$126 per column = \$ 4,948

The investigation and preparation of the investigative report for each petition for modification filed with MSHA takes an inspector approximately 24 hours. Travel expenses are not included because inspectors are at mines frequently.

140 investigations x 24 hours per investigation = 3,360 hours

3,360 hours x \$24 per hour (average hourly rate for a mine inspector) = \$80,640

Mailing costs:

140 investigative reports x \$3 per report = \$420

MSHA estimates that review of the petition for modification and investigative report, and preparation of a proposed decision takes a staff attorney approximately 1.25 hours per petition for

half of the petitions submitted, and approximately 8 hours per petition for the remaining petitions.

| | | |
|--|---|------------------|
| 70 petitions x 1.25 hours/petition | = | 88 hours |
| 70 petitions x 8 hours/petition | = | <u>560 hours</u> |
| Total | = | 648 hours |
| 648 hours x \$28 per hour (average hourly rate for staff attorney) | = | \$18,144 |

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

The change in burden hours (from 6,400 to 4,400 hours) is due to a reduction in the number of petitions filed (from 217 to 140) and the fact that 30 of the 140 petitions filed were prepared by independent legal counsel. Accordingly, the burden for the 30 petitions is accounted for in item 13 as a cost to the mine operator.

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.

The results from the information gathered from this collection will not be published except for a notice of receipt and a notice summarizing petitions granted as discussed in Items 2 and 14.

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.

MSHA is not seeking approval to not display the date.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

There are no certification exceptions identified with this information collection.