

SUPPORTING STATEMENT

Hazardous Conditions Complaints, 30 CFR, Part 43.4 and 43.7,

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.

Under Section 103(g) of the Mine Safety and Health Act of 1977 (P.L. 91-173, as amended by P.L. 95-164) (the Act)), a representative of miners, or any individual miner acting voluntarily as a representative of miners, may submit a written or oral notification of alleged violation of the Act or a mandatory standard or of an imminent danger. Such notification requires MSHA to make an immediate inspection. A copy of the notice must be provided to the operator.

Title 30, CFR, Part 43, implements Section 103(g) of the Act. It provides the procedures for submitting notification of the alleged violation and the actions which MSHA must take after receiving the notice. Although the regulation contains a review procedure (required by Section 103(g)(2) of the Act) whereby a miner or a representative of miners may in writing request a review if no citation or order is written as a result of the original notice, the option is so rarely used that it was not considered in the burden estimates.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for new collections, indicate the actual use the agency has made of the information received from the current collection.

Notification of alleged violations by a miner or a representative of miners are investigated as soon as possible to determine if a citation or a withdrawal order is appropriate unless on the face of the complaint, the condition complained of, even if it were found to exist, would clearly not constitute a violation or imminent danger. Where an inspector makes an inspection and finds a violation or imminent danger, he or she issues a citation or withdrawal order as appropriate.

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.

MSHA has implemented a toll free telephone line for the reporting of hazardous conditions and provides posters for display at mine surface facilities and other public places informing miners of the toll free line available at telephone number 1-800-746-1554. In addition to the toll free telephone line, on August 28, 2000, MSHA implemented an E-mail reporting system that

provides for electronic reporting of hazardous conditions. The Code-a-phone E-mail submission forms can be found on MSHA's homepage by accessing the internet at <http://www.msha.gov>.

Neither the use of E-mail nor telephone reporting of hazards significantly reduces the burden in that the time required to verbally describe a hazardous condition or to reduce it to a written document by hand or on a keyboard is essentially the same. The alternative forms provide convenience for reporting.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.

Complaints pertain to specific conditions at the mine. There is no similar nor duplicate information that could be used.

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

The provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act), and MSHA regulations and standards apply to all operations, regardless of size, because accidents, injuries, and illnesses can occur at any mine regardless of size. Congress intended that the Mine Act be enforced at all mining operations within its jurisdiction regardless of size and that information collection and recordkeeping requirements be consistent with efficient and effective enforcement of the Mine Act. However, Congress did recognize that small operations may face problems in complying with some Mine Act provisions. Section 103(e) of the Mine Act directs the Secretary of Labor not to impose an unreasonable burden on small businesses when obtaining any information under the Act. This information collection does not have a significant impact on a substantial number of small entities.

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.

Whenever a miner or representative of miners believes that an imminent danger exists, or other hazardous conditions including violations of safety and health standards are present, he/she may request an immediate inspection by submitting a written or oral notification to MSHA. Such 103(g) inspections are mandatory and the elimination of the written/verbal complaints or MSHA's inspection and investigation of the reported hazardous conditions would prolong the exposure of miners to the hazardous condition; weaken the confidence of miners in the Agency's ability to protect their health and safety; and discourage mine operators from developing and maintaining compliance programs.

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.

Hazardous conditions complaints are a statutory provision of the Act. MSHA responds to both written and verbal complaints and even anonymous complaints of hazardous conditions by conducting inspections or investigations. However, only verbal or written complaints which articulate discrete health or safety hazards, describe imminent dangers, indicate the presence of violations of standards, and describe circumstances within MSHA jurisdiction automatically result in immediate 103(g) inspections. On rare occasions, less complete complaints may result in further inquiry as to the purpose(s) or legitimacy of the complaint before MSHA commits resources to conducting 103(g), hazardous conditions, inspection. Such inquiry may take the form of meetings with miners' representatives, questioning miners during ongoing inspection activities, meetings with mine management or direct MSHA investigation and observation of mine conditions or practices. Should such inquiry determine the complaint does not address legitimate concerns with hazardous conditions, a 103(g) inspection is not conducted. The filing of a complaint is generally specific to a perceived hazard and seldom has a repeat for the same circumstance. Therefore, there is no requirement for the frequency of reporting and no known circumstance requiring more than quarterly reporting.

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 describe actions taken by the agency in response to the 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 record keeping, 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.

A notice will be published in the Federal Register informing the public that this paperwork requirement is under review by OMB, and allowing 60 days for public comment.

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

MSHA has made no decision to provide payment or gifts to the respondents.

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

A copy of the written notice is given to the operator of the affected mine with the signature of the person submitting the notice deleted or blanked out. In addition, MSHA accepts anonymous and verbal hazard complaints, over a toll free hazard reporting phone line or calls directly to District or Field Offices, which Agency personnel reduce to writing so that for those complaints confidentiality is doubly assured. MSHA also accepts anonymous E-mail complaints. There are no MSHA forms on which hazardous conditions are to be reported. Any written document, E-mail or telephone complaint is investigated.

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 involved. Although the miner or representative of miners must sign the required written notice, he or she is protected by Section 105(c) of the Mine Act which prohibits discrimination on account of the exercise of statutory rights. Section 103(g) of the Mine Act imposes the additional safeguards of deleting the miner's signature or the signature of the representative of miners from the complaint so as to encourage uninhibited miner participation in health and safety matters. Complaints may also be made anonymously by telephone or E-mail.

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-L.**
- ! **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.

MSHA's records show that an average of 651 (314 coal + 337 Metal and Non-metal) hazardous conditions complaints were received annually through fiscal years 1998-2000. Although the time required by individual miners to prepare a written notification of an alleged violation may vary widely from a few minutes to a number of hours, the average time is estimated to be about 12 minutes (0.2 hour).

$$651 (314 \text{ coal} + 337 \text{ metal and non-metal}) \times 0.2 \text{ hour} = 130 \text{ burden hours}$$

Estimated Cost of Burden Hours

MSHA estimates the cost to the respondent per complaint to be negligible. MSHA knows of no instances where the complainant lost income or time from work to prepare or submit a complaint. Virtually all complaints are submitted after or before the complainant's work shift, submitted verbally or in writing by family members or through a miner's representative or other advocacy organization. The complaints may take the form of a hand written note, a formal letter posted by certified mail or anonymous phone calls to MSHA Headquarters or MSHA District or Field Office locations or E-mails. In addition, nearly all formal letters of complaint come through a union or safety advocacy organization and those costs are not born by the individual complainant. Verbal communicated complaints are most often local or over the toll free MSHA Hazardous Conditions Phone Line or E-mails and, as a result have negligible cost to the complainant. Only, the hand written complaints, sent through the U.S. Post Office or private delivery service, would incur a cost borne by the complainant and such complaints are extremely rare.

13. Provide an estimate of the total annual cost burden to respondents or record keepers 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 accepts 103(g) complaints in whatever written form they are submitted. Telephone complaints or E-mail complaints are reduced to a written format by MSHA. In all cases, no special equipment is required by the standard for the respondents to file a complaint.

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.

It is estimated that the cost to the Federal Government is significant. In addition to the actual 103(g) inspections, approximately 60 percent of the safety or hazard complaints; some of which involve previously unreported but reportable mine accidents; submitted to MSHA are by telephone over a toll free (800) number, published in Part 50 CFR Title 30, or via E-mail. MSHA has also provided Poster/Announcements to be displayed on mine property on/in which the accident reporting number 1-(800)-746-1553 is listed along with 1-(800)-746-1554 for the reporting of hazardous conditions and violations of safety and health standards. Virtually all of the calls to the (746-1554) are anonymous with the responsibility of recording, transcribing and forwarding the complaint to the appropriate MSHA District or Regional Office borne by the MSHA Headquarters staff in Arlington Virginia. Since 1998, MSHA has maintained an internet website on which E-mail hazardous conditions complaints may be posted. Those complaints are handled in the same manner as a telephone complaint. In addition, a return memorandum, identifying the complaint number and providing information as to the outcome of the inspection conducted in response to the complaint is required for each complaint. These calls initiate a significant portion of the inspection events conducted under 103(g) of the Mine Act.

Significant Federal inspection costs have been associated specifically for this information collection. The 103(g) reviews/inspections occur only in response to reported imminent dangers or other hazard complaints and are not a part of the otherwise mandated, periodic, complete inspections of mines and mine facilities. Complete inspections are required under Section 103(a) of the Mine Act and are required 4 times a year for underground mines and twice a year for surface operations. MSHA records for fiscal years 1998 through 2000 indicated that the average time required for a 103(g) inspection event is 19.8 hours for Metal and Non-metal complaints and 19.5 hours for Coal complaints.

The average grade and salary of a mine inspector is GS 12/5, at \$57,958 per annum or \$26 per hour (from the **OPM General Schedule**). This results in a direct inspection labor cost of:

Metal and Non-metal
337 events per year X 19.8 hours X \$26.19/ hour = \$174,755

Coal			
314 events per year X 19.5 hours X \$26.19 / hour	=		<u>\$160,361</u>
Total	=		\$335,116

In addition, approximately 60% (391) of the 651 events are initiated by verbal, telephone, or E-mail complaints for which MSHA is responsible for reducing the complaints to writing, forwarding the complaints to the appropriate field office, and tracking the inspection results for each event through written reports. These activities are usually handled by headquarters and district staff members as co-lateral duties. MSHA estimates that each such event consumes 4 hours. Therefore, for these activities labor cost is estimated as follows:

$$651 \text{ events} \times 60\% \times 4 \text{ hours/event} \times 26.19 = \$40,919$$

Total Federal Labor Cost: \$376,035 per year

This estimate excludes equipment and office expenses, travel or other expenditures on the basis that those costs are predominately associated with the mandatory complete inspection of mines and are not significantly increased by 103(g) inspection events.

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

The increase in burden hours (from 127 to 130) is due to an increase in the number of respondents and complaints received (from 637 to 651), and an increase in the three year average of MSHA's recorded 103(g) inspection events for fiscal years 1998 through 2000.

16. For collections of information whose results are planned to 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.

Neither written 103(g) complaints nor MSHA transcribed verbal complaints are published. Such notices of alleged violations received from miners or representatives of miners are not tabulated or published; however, reports of inspectors are prepared by the inspector performing the inspection and the number of these inspections is entered into the agency's computer systems of records.

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.

N/A. MSHA is not seeking approval to either display or not display the expiration date for OMB approval of this information collection.

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

There are no certification exceptions identified with this information collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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

1. Describe (including numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

The collection of this information does not employ statistical methods.

2. Describe the procedures for the collection of information including:

- ! Statistical methodology for stratification and sample selection,
- ! Estimation procedure,
- ! Degree of accuracy needed for the purpose described in the justification,
- ! Unusual problems requiring specialized sampling procedures, and
- ! Any use of periodic (less frequently than annual) data collection cycles to reduce burden.

The collection of this information does not employ statistical methods. The right and opportunity for miners and representatives of miners to make hazardous conditions complaints is a statutory provision of the Agency's enabling legislation. Such notices, written or verbal, result in mandated inspection and enforcement activities. There is no statistical alternative to being notified of imminent dangers or other hazardous conditions and this is especially important for hazardous conditions which develop between or were unaddressed by the mandated periodic complete mine inspections.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

MSHA regulations require miners be trained in their rights, including the provisions of Parts 43.4 and 43.7. In addition, MSHA inspectors inform miners of those rights and of the hazard reporting toll free phone line, E-mail, and of local district and field office locations and phone numbers. However, the agency neither solicits nor discourages the miners from filing formal

written complaints and responds to verbal complaints as thoroughly as the information provided allows.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.

MSHA does not conduct tests of procedures or methods other than to maintain the telephone lines, telephone listing, internet website, and other equipment in serviceable and up-to-date condition.

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

There are no statistical aspects to the activities addressed by Parts 43.4 or 43.7 and, as a result, no persons have been consulted to design or develop a statistical method.

