

SUPPORTING STATEMENT

Refuse Piles and Impoundment Structures, Recordkeeping and Reporting Requirements (pertain to surface coal mines and surface work areas of underground coal mines), 30 CFR Section 77.215, 77.215-2, 77.215-3, 77.215-4, 77.216-2, 77.216-3, 77.216-4, and 77.216-5

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.

Impoundments are structures that are used to impound water, sediment, or slurry or any combination of materials; and refuse piles are deposits of coal mine waste that are removed during mining operations or separated from mined coal and deposited on the surface. The failure of these structures can have a devastating affect on a community. To avoid or minimize such disasters, standards exist for the construction and maintenance of these structures, for annual certifications, for certification for hazardous refuse piles, for the frequency of inspections, and the methods of abandonment for impoundments and impounding structures.

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.

MSHA reviews the fire extinguishing and abandonment plans to ensure that they conform with prudent engineering and safety practices, and when implemented will eliminate existing hazardous conditions. MSHA reviews and approves impoundment and refuse pile plans after all hydro logic hydraulic and engineering data are evaluated and the plans are determined to be adequate. The mine operators use the approved plans and approved revisions to plans for constructing impoundment structures and refuse piles.

MSHA reviews the annual status report in order to determine that the structure is being built according to the originally submitted and approved engineering plan. The annually required certification by a registered professional engineer, who has been trained by the coal company, is the company's statement that its rock and earth dam is being built according to approved prudent

engineering practices. The certification also certifies that no deviations or modifications, which may not be recorded or professionally designed and may be detrimental to the dam, have been implemented at the site.

The weekly physical examination and instrument monitoring along with a prompt report of the results to a person in authority, and the subsequent recording of the results of that examination, are required in order to ascertain by the companies and by the Secretary of Labor that physical forces such as erosion (due to an inordinate amount of precipitation) or uncontrolled or increased seepage through an earth dam has not resulted. Such conditions and other factors can be very detrimental to the structure and subsequently dangerous to any inhabitants downstream. Weekly instrument records show fluctuations of such important factors as the dam's phreatic line (an internal flow network and water table) which is very important to determine possible failure surfaces and pore pressures to calculate the stability of the structure. To minimize the information collection, the most recent regulation changes allow operators to apply for longer inspection intervals for sites that have been in place for a long time.

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.

No improved information technology has been identified that would reduce the burden, however in order to comply with the Government Paperwork Elimination Act mine operators may retain the records using 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.

MSHA has reviewed its regulatory position with the Office of Surface Mining (OSM), U.S. Department of the Interior, and the Environmental Protection Agency. As a result of this review, it was determined that there was no duplication in the reporting and record keeping burden imposed by these agencies. MSHA met with representatives of OSM prior to promulgation of their regulations to assure that there was no conflict.

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 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 record keeping 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.

The absence of abandonment plans, the lack of inspections and monitoring of instruments, and less frequently required certifications would allow unsafe conditions to go undetected. This can quickly result in detrimental conditions for the dam and subsequently threaten any inhabitants and property downstream with a potential disaster.

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;
- copies • requiring respondents to submit more than an original and two 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.

Although there is no explicit requirement that a mine operator retain copies of weekly reports, the operator must maintain records of the results of weekly examinations and submit an annual status report during the entire time the mine is in operation. This collection of information is otherwise consistent with the guidelines in 5 C.F.R. § 1320.5 and does not contain any requirements for respondents to report more often than quarterly.

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 Section 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 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.

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 decided not to provide 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.

There is no assurance of confidentiality provided to respondents.

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 14.

The frequency of response is annual for each mine operator with an impoundment or a hazardous refuse pile. MSHA's records show that in FY 2001, there are approximately 711 impounding structures and 44 hazardous refuse piles, for a total of 755 sites. All plans or revisions would be developed by a mining company engineer, who earns an average of \$54.53/hour (based on data from **U.S. Coal Mine Salaries, Wages, & Benefits - 2000 Survey Results**).

The burden hours and cost estimates for all annual plan requirements from the coal mining industry were computed as follows:

Impoundment and Refuse Pile Plans, and Revisions: (1) MSHA estimates that it takes 1,300 hours to prepare a new impoundment plan with 50 new plans submitted per year; 16 hours for a new refuse pile plan with 50 new refuse pile plans being submitted

per year; and 5 hours to prepare a revision to an existing impoundment plan with 100 being submitted. Therefore,

50 new impdmt. plans/yr x 1,300 hours	=	65,000 hours
50 new refuse pile plans/yr x 16 hours	=	800 hours
100 revised impdmt. plans/yr x 5 hours	=	<u>500 hours</u>
Total Burden Hours		66,300 hours

66,300 hours x \$54.53/hr = \$3,615,339

Fire Extinguishing Plans: MSHA estimates that it receives 1 fire extinguishing plan per year and that it takes approximately 4 hours to prepare an average plan. Therefore,

1 plan x 4 hours/plan	=	4 hours
4 hours x \$54.53/hr	=	\$ 218

Abandonment Plans: MSHA estimates that an average of 25 abandonment plans are developed each year, and that it takes 8 hours to prepare such a plan by a company engineer. Therefore,

25 abandonment plans x 8 hours/plan	=	200 hours
200 hours x \$54.53/hr	=	\$10,906

Annual Status Report and Certification: MSHA estimates that 100 existing impoundments and 15 existing refuse piles will undergo changes that are required to be reported on the annual certification. Such revisions would take a company engineer approximately 2 hours per report. Therefore,

115 revisions x 1 report x 2 hours	=	230 hours
230 hours x \$54.53/hr	=	\$12,542

Weekly Inspections and Instrumentation Monitoring: MSHA estimates that the qualified miner, who inspects an impoundment, earns approximately \$27.56/hour. It is estimated that the inspections where mine operators have installed monitoring instruments, will take an average of 3 hours every 3 weeks (17 inspections per year) to perform this function. Sites without monitoring instruments will be able to be inspected and recorded in approximately 2 hours every 3 weeks (17 inspection per year). An estimated 40 percent, or 285 sites of the total 711, have monitoring instruments installed. Therefore,

285 impdmt. w/monitoring instruments		
x 17 insp./yr. X 3 hours	=	14,535 hrs.

14,535 hours x \$27.56/hr = \$400,585

426 impdmt. w/o monitoring instruments
 x 17 insp./yr x 2 hours = **14,484 hours**

14,484 hours x \$27.56/hr = \$399,179

SALARY COST GRAND TOTAL: = **\$4,438,769**

Cite/ Reference	Total Respond- ents	Frequency	Total Responses	Average Time per Response	Burden
77.215 New Refuse Files	50	Annually	50	16 hrs.	800 hrs.
Fire Ext. Plans	1	Annually	1	4 hrs.	4 hrs.
Abandonment Plans	25	Annually	25	8 hrs.	200 hrs.
Annual Certification (new)	15	Annually	15	2 hrs.	30 hrs.
77.216 New Impoundments	50	Annually	50	1,300 hrs.	65,000 hrs.
Revisions	100	Annually	100	5 hrs.	500 hrs.
Annual Certification (existing)	100	Annually	100	2 hrs.	200 hrs.
Inspections w/monitoring Instruments	285	On Occasion	4,845	3 hrs.	14,535 hrs.
w/o Mon. Instruments	426	On Occasion	7,242	2 hrs.	14,484 hrs.
TOTALS	755	///////// //	12,428	8 hrs.	95,753 hrs.

13. Provide an estimate of the total annual cost burden to respondents or record-keeper 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 does not anticipate that there will be any costs associated with this information collection other than those designated under number 12 above.

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.

The average hourly wage for an MSHA specialist (GS-12/5) is a \$26.19/hour (based on Office of Personnel Management, 2001 General Schedule. MSHA estimates that it takes a specialist approximately 2 hours to review an average report for an impoundment or hazardous refuse pile.

Impoundment and Refuse Pile Plan, and Revisions: (1) MSHA estimates that it takes 2 months (320 hours) to review and approve an average impoundment plan, and 50 new impoundment plans are received annually. (2) It takes approximately 4 hours to review a revision to an existing impoundment plan, and 100 revised plans are submitted annually. (3) A review of refuse pile plans is estimated to take approximately 2 hours, and 50 new plans are received annually. Therefore;

50 new plans/yr x 320 hours	=	16,000 hours
16,000 hours x \$26/hr	=	\$416,000

100 revisions/yr x 4 hours	=	400 hours
400 x \$26/hr	=	\$10,400
50 new refuse piles/yr x 2 hours	=	100 hours
100 hours x \$26/hr	=	\$2,600

Fire Extinguishing Plan and Abandonment Plans: MSHA receives an average of 1 fire extinguishing plan and 20 abandonment plans per year. Safety specialists estimate that it would take approximately 1 hour to review and prepare a response for one of these plans. Therefore;

21 reports x 1 hour	=	21 hours
21 hours x \$26/hr	=	\$546

Annual Status Report and Certification: 100 existing impoundment and 15 existing refuse piles will undergo changes that are required to be reported. The review will take approximately 1 hour per report. Therefore;

115 reports x 1 hour	=	115 hours
115 x \$26/hr	=	\$2,990

TOTAL FEDERAL HOURS = 16,636 HOURS

FEDERAL COST GRAND TOTAL = \$432,536

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

The decrease of 935 hours in burden hours of (from 96,688 to 95,753) is due to a reduction in the number of responses (from 12,768 to 12,428), and a reduction in new impoundment structures (from 731 to 50) for this time period.

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.

MSHA does not intend to publish the results of this information collection.

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 either display or not display the expiration date for OMB approval of this information collection. Since there are no forms on which to display the expiration date.

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

MSHA is not requesting an exception to the certification statement.

B. Collection of Information Employment Statistical Methods

Collection of information does not employ statistical methods.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request
Submitted for Public Comment and Recommendations;
Refuse Piles and Impounding Structures, Record keeping and
Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before (insert date 60 days after date of publication in the FEDERAL REGISTER).

ADDRESSES: Send comments to Gordon J. Burke, Jr., Director, Administration and Management, 4015 Wilson Boulevard, Room 615, Arlington, VA 22203-1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to Burke-Gordon@msha.gov, along with an original

printed copy. Mr. Burke can be reached at (703) 235-13830 (voice), or (703) 235-1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Ms. Barnard can be reached at barnard-charlene@msha.gov (Internet E-mail), (703) 235-1470 (voice), or (703) 235-1563 facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Coal Mine Health and Safety Act of 1969 was amended by the Federal Mine Safety and Health Act of 1977 after the Buffalo Creek dam failure in 1972 in West Virginia. The refuse pile and impoundment standards, Title 30 CFR Sections 77.215 and 77.216 had been enacted earlier in 1975 and were incorporated into that Act. Additional parts of these Sections were promulgated and enacted in 1992.

The standards require that the agency approve prudently engineered design plans for dams and their impoundments, as well as the plans for hazardous refuse piles that are routinely constructed by coal mine operators. Plan revisions are also required to be submitted for approval. In addition, the standards also require plans when one of these sites is to be abandoned. And plans are required when spontaneous fires erupt and need to be extinguished at the

burning site. Records of weekly inspections and instrument monitoring are also required to ensure that the sites remain safe. Finally, the mine operators are also required to submit an annual status report and certification that guarantees that the site is being constructed in accordance with the approved plan, and the site has not been altered during the construction year.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Refuse Piles and Impounding Structures, Record keeping and Reporting Requirements. MSHA is particularly interested in comments which:

- * evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * enhance the quality, utility, and clarity of the information to be collected; and

- * minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (<http://www.msha.gov>) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (<http://www.msha.gov/regspwork.htm>)", or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

There are approximately 750 coal mine impounding structures, of which at least 250 are high-hazard sites. In addition, there are hundreds of refuse piles, and of these, it is estimated that 25 are hazardous. All impoundments and hazardous refuse piles are required by the standards to be constructed and operated in an approved manner. In addition, coal mine operators frequently revise construction plans to accommodate mining conditions, cycles or markets. Since these revisions to the structures can adversely affect a great number of people, such changes are required to be planned in a prudent manner and approved by the agency.

Fire extinguishing plans are only required from an operator when a spontaneous combustion has occurred, and the operator is directed to extinguish the fire.

Inspections on a weekly basis, or inspections at a longer interval for long-established and stable impoundments (after the regulation changes in 1992), are required to ensure that precipitation, seismic activity, or perhaps an unknown construction flaw, has not adversely affected any part of the dam site. The annual status report and certification ensures that the company's engineers confirm that the site is in accordance with the approved engineering plan.

An abandonment plan approved by the agency, ensures that a hazardous site is not left in place after all mining activity has ceased.

Type of Review: Extension

Agency: Mine Safety and Health Administration

Title: Impounding Structures and Refuse Piles, Reporting Requirements, Certifications and Record keeping

OMB Number: 1219-0015

Record keeping: 3 years

Affected Public: Business or other for-profit

Cite/Reference/Form/etc: 30 CFR Sections 77.215 and 77.216

Total Burden Cost(capital/startup): None

Total Burden Cost(operating/maintaining): None

Cite/ Reference	Total Respond- ents	Frequency	Total Responses	Average Time per Response	Burden
77.215 New Refuse Piles	50	Annually	50	16 hours	800 hours
Fire Ext. Plans	1	Annually	1	4 hours	4 hours
Abandonment Plans	25	Annually	25	8 hours	200 hours
Certificatio n	15	Annually	15	2 hours	30 hours
77.216 New Impoundments	50	Annually	50	1,300 hours	65,000 hours
Revisions	100	Annually	100	5 hours	500 hours
Annual Certificatio n	115	Annually	115	2 hours	230 hours
Inspections w/monitoring Instruments	285	On Occasion	4,845	3 hours	14,535 hours
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TOTALS	755	//////////	12,428	//////////	95,753

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

DATED:

Gordon J. Burke, Jr.
Director, Administration and
Management

1219-0015
October 4, 2001