

Supporting Statement

30 CFR § 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 of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the 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 CFR § 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 CFR § 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 Director, Office of Standards, Regulations and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR § 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 83-1), describe any methods used to minimize burden.**

This information does not have a significant impact on small businesses or other small entities. However, MSHA has made available on our web-site various sources of information, such as "Technical Assistance," "Best Practices," and an "Accident Prevention" site. To assist with compliance, these provide tips and general information on a number of various topics.

- 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 for each 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.**

30 CFR 44.9 requires that an operator of a mine for which there is no representative of miners post a copy of each petition on the mine bulletin board and maintain the posting until a ruling on the petition becomes final. Otherwise, the requirements under these standards are consistent with the general information collection guidelines in 5 CFR § 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 published a 60-day preclearance Federal Register notice on June 9, 2006 (Vol 71, Number 111, pages 33490-33491), soliciting public comments regarding the extension of this information collection. No comments were received.

- 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 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 94 petitions for modification per year were received during the last three years for coal and metal and nonmetal mines. It is estimated that approximately 74 of those petitions were prepared by mine operators. MSHA estimates that it takes a mine operator on average approximately 40 hours to prepare a petition for modification.

Burden hours:

$$74 \text{ petitions} \times 40 \text{ hours/petition} = 2,960 \text{ hours}$$

Burden hour cost – mine management personnel: (salary cost are estimated based on data taken from the U.S. Coal Mine and Metal and Industrial Mineral Mine Salaries, Wages, and Benefits-2004 Survey Results).

$$2,960 \text{ hours} \times \$52.78 \text{ per hour} = \$156,229$$

(Coal = \$59.19; M/NM = \$46.37; avg. = \$52.78)

MSHA is of the opinion that the burden on mine operators to post copies of the petition for modification at the mine is minimal and has assigned no cost burden to these requirements.

$$\begin{array}{l} \text{TOTAL BURDEN HOURS} \\ \text{TOTAL BURDEN HOUR COSTS} \end{array} = \begin{array}{l} 2,960 \text{ hours} \\ \$156,229 \end{array}$$

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 20 petitions for modification were prepared by independent legal counsel, and that it takes approximately 16 hours to prepare a petition. The average hourly rate of independent counsel is estimated to be \$125 per hour.

$$20 \text{ petitions} \times 16 \text{ hours a petition} = 320 \text{ hours}$$

320 hours x \$125 per hour	=	\$ 40,000
Estimated mailing costs for petitions for modification: 94 petitions x \$4.77 per petition	=	\$ 448
TOTAL COST BURDEN	=	\$ 40,448

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 MSHA administrative staff person approximately three hours to prepare:

94 notices x 3 hours a notice	=	282 hours
282 hours x \$25.08 per hour (salary of MSHA administrative staff GS 11/5) person)	=	\$ 7,073

The cost for publication of the notice of receipt and summary of petitions granted in the Federal Register is approximately \$166 per column. Petition-related notices average 3 petitions per column.

94 petition notices x 0.333 column/ notice x \$166 per column	=	\$ 5,201
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Of the 94 petitions for modification that are received, MSHA estimates that approximately 64% (60) are approved. The cost to MSHA of publishing notices of approved petitions is as follows:

60 petition notices x 0.333 column/notice x \$166 per column	=	\$ 3,320
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The investigation and preparation of the investigative report for each petition for modification filed with MSHA takes an inspector (GS 12/5) approximately 40 hours. Travel expenses are not included because inspectors are at mines frequently.

94 investigations x 40 hours per investigation hours	=	3,760
3,760 hours x \$30.06 per hour (average hourly wage for a GS 12/5 mine inspector)	=	\$113,026
Mailing costs: 94 investigative reports x \$4.77 per report	=	\$ 448

MSHA estimates that review of the petition for modification and investigative report, and preparation of a proposed decision takes a government Specialist (GS 13/1) approximately 24 hours per petition (due to their complexity) for half of the petitions submitted and approximately 2.5 hours per petition for the remaining petitions.

47 petitions x 24 hours	=	1,128 hours
47 petitions x 2.5 hours	=	<u>118 hours</u>
		1,246 hours

1,246 hours x \$31.54 per hour (average hourly wage rate of Specialist)	=	\$ 39,299
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Additionally, MSHA estimates that review of the petition for modification and investigative report and review of MSHA's proposed decision takes a government staff attorney (GS 14/10) approximately 2.5 hours per petition for half of the petitions and approximately 8 hours for the remaining petitions.

47 petitions x 8 hours	=	376
hours		
47 petitions x 2.5 hours	=	<u>118</u>
hours		
		494 hours

494 hours x \$ 48.46 per hour (average hourly wage of a staff attorney)	=	\$ 23,939
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Total Cost to the Federal Government	=	\$192,306
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15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

There has been a decrease in the number of *respondents*, *responses* and *hours*. This decrease is due to fewer mine operator submitting petitions for modification. One reason the submission of petitions has decreased is the promulgation of final regulations, such as the Belt Air rule.

The total *cost* burden to the mine operators has remained at \$40K.

16. For collections of information whose results will be published, outline plans for tabulation, and publication and 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.

There are no statistical aspects.

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.

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.

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 a 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.**
- 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 frequent than annual) data collection cycles to reduce burden.**
- 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.**
- 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.**

- 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 persons(s) who will actually collect and/or analyze the information for the agency.**

The collection of this information does not employ statistical methods.

**Federal Mine Safety & Health Act of 1977,
Public Law 91-173,
as amended by Public Law 95-164***

An Act

SEC. 101. (c) Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of such operator or representative or other interested party, to enable the operator or the representative of miners in such mine or other interested party to present information relating to the modification of such standard. Before granting any exception to a mandatory safety standard, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected mine. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

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[Page 194]

TITLE 30--MINERAL RESOURCES

CHAPTER I--MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR
PART 44_RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY
SAFETY STANDARDS--Table of Contents

Subpart A_General

Sec. 44.9 Posting of petition.

An operator of a mine for which there is no representative of miners shall post a copy of each petition concerning the mine on the mine bulletin board and shall maintain the posting until a ruling on the petition becomes final.

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[Page 194]

TITLE 30--MINERAL RESOURCES

CHAPTER I--MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR
PART 44_RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY
SAFETY STANDARDS--Table of Contents

Subpart B_Initial Procedure for Petitions for Modification
Sec. 44.10 Filing of petition; service.

A petition for modification of the application of a mandatory safety standard under section 101(c) of the Act may be filed only by the operator of the affected mine or any representative of the miners at such mine. All petitions must be in writing and must be filed with the Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209-3939. If the petition is filed by a mine operator, a copy of the petition shall be served by the mine operator upon a representative of miners at the affected mine. If the petition is filed by a representative of the miners, a copy of the petition shall be served by the representative of miners upon the mine operator. Service shall be accomplished personally or by registered or certified mail, return receipt requested.

[55 FR 53440, Dec. 28, 1990, as amended at 67 FR 38384, June 4, 2002]

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[Page 194]

TITLE 30--MINERAL RESOURCES

CHAPTER I--MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 44 RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS--Table of Contents

Subpart B Initial Procedure for Petitions for Modification
Sec. 44.11 Contents of petition.

(a) A petition for modification filed pursuant to Sec. 44.10 shall contain:

- (1) The name and address of the petitioner.
- (2) The mailing address and mine identification number of the mine or mines affected.
- (3) The mandatory safety standard to which the petition is directed.
- (4) A concise statement of the modification requested, and whether the petitioner proposes to establish an alternate method in lieu of the mandatory safety standard or alleges that application of the standard will result in diminution of safety to the miners affected or requests relief based on both grounds.
- (5) A detailed statement of the facts the petitioner would show to establish the grounds upon which it is claimed a modification is warranted.
- (6) Identification of any representative of the miners at the affected mine, if the petitioner is a mine operator.

(b) A petition for modification shall not include a request for modification of the application of more than one mandatory safety standard. A petition for modification shall not request relief for more than one operator. However, an operator may file a petition for modification pertaining to more than one mine where it can be shown that identical issues of law and fact exist as to the petition for each mine.