

SUPPORTING STATEMENT

30 C.F.R §§ 75.1702 and 75.1702-1, Program to Prevent Smoking in Hazardous Areas (pertains to underground coal 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 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 877(c), and 30 C.F.R. § 75.1702 prohibits persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act and § 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. Section 75.1702-1 requires that the mine operator submit the program plan to MSHA for approval. The purpose of the program is to insure that a fire or explosion hazard does not occur. Section 103(h) of the Mine Act, 30 U.S.C. § 813, authorizes MSHA to collect information necessary to carryout its duty in protecting the safety and health of miners

A cigarette lighter was found to be the cause of a mine explosion that took the lives of 13 men in December 1981 and there have been many other similar occurrences in the past. As recently as May 1994, a mine explosion resulted in two fatalities, serious injuries to other survivors and severe damage to the mine. MSHA's investigation determined that the explosion's most likely source of ignition was the open flame of a cigarette lighter or match. The information collection requirements contained in 30 C.F.R. § 75.1702 and §75.1702-1 help to ensure that miners are protected for these unnecessary hazards.

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.

The mine operator uses the information to conduct the program. MSHA uses the information to determine the mine operator's compliance with the standard and that a program is developed and implemented to prevent smoking in hazardous areas.

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. The

programs to prevent smoking, prepared for submittal to and approval by the MSHA District Manager, are narrative descriptions of the frequency, locations and methods of searches conducted to prevent the intentional or inadvertent carrying of smoking materials into an underground coal mine. Such narrative plans can be prepared using personal computers and word processing programs and submitted via e-mail, where the mine operator has the capability of affixing transmittable authorization signatures or where the e-mail or facsimile is followed by a signed hard copy. However, neither the use of nor absence of access to electronic media significantly affects the burden imposed by the standard.

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.

There is no similar or duplicate information that could be used. Program approvals are granted on a mine-by-mine basis. Where State agencies require such programs, MSHA will usually accept the same program.

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.

This information does not have a significant impact on small businesses or other 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.

MSHA's enforcement of this standard would be hampered by the failure to collect this information. The mine operator need only submit the program once for approval.

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' confidentiality to the extent permitted by law.**

While there is no specific requirement that records be maintained for more than three years, all underground coal mines must have an approved smoking materials search plan in effect during the entire time they are operating. MSHA requires this program as one of the preliminary plans which must be submitted for approval in accordance with 30 C.F.R. § 75.1721(b)(9) prior to commencing the extraction of coal (30 C.F.R. § 75.1721 - Opening of new underground coal mines, or reopening and reactivating of abandoned or deactivated coal mines, notification by the operator; requirements). Once submitted and approved, a revised program is only required where the mine ownership changes or the program proves to be inadequate to prevent the carrying of smoking articles underground. This collection of information is otherwise consistent with the 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 published a 60-day preclearance Federal Register notice on April 9, 2007 (Volume 72, Number 67, Page 17590), 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 does not 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 ~~form~~ 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.**

Hour Burden

MSHA Coal Mine Safety and Health maintains a computer data base to track the submittal and approval of mandatory plans. The programs required to be submitted under 30 C.F.R. §§ 75.1702 and 75.1702-1 are among the mandatory plans tracked in the Mine Plan Approval Data Base. In FY 2006 there were 100 new plans and 1 revised plan submitted under this standard. MSHA safety specialists estimate that it takes a mine operator approximately 30 minutes (0.5 hour) to develop an average program.

$$101 \text{ plans} \times 0.5 \text{ hour per program} = 50.5 \text{ hours}$$

Hour Burden Cost

Salaries used in this estimate were taken from the U.S. Coal Mine Salaries, Wages, & Benefits - 2005 Survey Results. MSHA estimates that the programs are prepared by the technical professional staff of coal mines who earn \$63.39 hour.

$$50.5 \text{ hours} \times \$63.39 \text{ per hour} = \$3,201$$

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 there are no additional costs associated with submittal of these plans. MSHA's experience is that these plans are relatively straightforward, requiring minimal effort, and are nearly always submitted in conjunction with other mandatory plans such that no separate and identifiable mailing or processing costs are incurred by the mine operators.

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.

There were approximately 492 underground coal mines (mines in active, intermittent or active non-producing status) affected by the standard in 2006. However, once a program is approved it normally remains in effect for the life of the mine. The number of annual responses would, therefore, be limited to programs developed for new mines or mines changing ownership. MSHA's records show in 2006 that there were approximately 100 new plans at underground coal mines and 1 established coal mines that changed ownership requiring a plan amendment. It is estimated that it will take MSHA District Office personnel (CY 2007 - inspector class and grade GS-1822-12 step 6 earning \$31.47 per hour) about 30 minutes (0.5 hour) to review and approve an average program.

$$101 \text{ programs} \times 0.5 \text{ hour} \times \$31.47 \text{ per hour} = \$1,589$$

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

MSHA's estimates of burden hours and costs associated with this standard recognizes that when mine properties are opened, reopened, reactivated or new mine properties open an initial program of searches for smoking material must be submitted for MSHA District Manager approval or that when existing operations change ownership and/or significantly alter their legal identity, revised mandatory plans are required. Therefore, a decline in the total number of plans submitted (184 to 101) has resulted in a reduction of 41.5 burden hours (from 92 to 50.5). Even though the

number of underground coal mines required to have programs to search for smoking materials increased substantially (204 as of 10/1/2002 increasing to 492 as of 10/1/2006) the actual records for programs submitted for approval declined (184 in 2003 to 101 in 2006) due to use of MSHA mine plan approval data base transaction records. Previous burden hour calculations relied on estimates of the number of plans processed by the district offices.

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.

There are no forms associated with this information collection on which to display the OMB number and expiration date.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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.

As statistical analysis is not required by the regulation, questions 1 through 5 do not apply.

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

An Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Federal Mine Safety and Health Act of 1977".

SEC. 103. (h) In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health, Education, and Welfare may reasonably require from time to time to enable him to perform his functions under this Act. The Secretary or the Secretary of Health, Education, and Welfare is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

SEC. 317. (c) No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

[Code of Federal Regulations]
[Title 30, Volume 1]
[Revised as of July 1, 2006]
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TITLE 30--MINERAL RESOURCES

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

PART 75_MANDATORY SAFETY STANDARDS_UNDERGROUND COAL MINES--Table of Contents

Subpart R_Miscellaneous

Sec. 75.1702 Smoking; prohibition.

[Statutory Provisions]

No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

[35 FR 17890, Nov. 20, 1970, as amended at 60 FR 33723, June 29, 1995]

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PART 75_MANDATORY SAFETY STANDARDS_UNDERGROUND COAL MINES--Table of Contents

Subpart R_Miscellaneous

Sec. 75.1702-1 Smoking programs.

Programs required under Sec. 75.1702 shall be submitted to the Coal Mine Safety District Manager for approval on or before May 30, 1970.