

SUPPORTING STATEMENT

Hazardous Conditions Complaints 30 C.F.R. §§ 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 Federal Mine Safety and Health Act of 1977, as amended (Mine Act), a representative of miners, or any individual miner where there is no representative of miners, may submit a written or oral notification of alleged violation of the Mine Act or a mandatory standard or of an imminent danger. The notifier has the right to obtain an immediate inspection by the Mine Safety and Health Administrations (MSHA). A copy of the notice must be provided to the operator, with individual miner names redacted.

MSHA regulations at 30 C.F.R. part 43 implement Section 103(g) of the Mine Act. These regulations provide the procedures for submitting notification of the alleged violation and the actions which MSHA must take after receiving the notice. Although the regulations contain a review procedure (required by Section 103(g)(2) of the Mine Act) whereby a miner or a representative of miners may in writing request a review if no citation or order is issued 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.

Notifications 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 which is manned 24 hours a day by a live operator, for the reporting of hazardous conditions. MSHA also provides posters for display at mine surface facilities and other public places informing miners of the toll free line available at telephone number 1-800-746-1553. In addition to the toll-free telephone line, MSHA

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implemented an enhanced web-based enterprise online e-mail reporting system in 2002 that provides for electronic submission of email notification of hazardous condition complaints. The Hazardous Condition Complaint (HCC) web based enterprise 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.

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.

There is no similar or duplicate information that could be used. Complaints are unique and generally pertain to specific conditions at specific mines.

5. If the collection of information impacts small businesses or other small entities, describe the 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.

Elimination of the written/verbal complaints or MSHA's inspection and investigation of the reported hazardous conditions could prolong the exposure of miners to the alleged 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 which protect our Nation's most precious mining resource, the miner.

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.

This collection of information is consistent with the requirements of 5 C.F.R. § 1320.5.

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 C.F.R. § 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.

MSHA published a 60-day preclearance Federal Register notice on May 7, 2007 (Volume 72, Number 87, Pages 25785-25786, 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 provides no 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.

To ensure the confidentiality of the complainant, as required by Section 103(g) of the Mine Act, all references that could identify the complainant in the notice provided to the mine operator are removed. In addition, MSHA accepts anonymous and verbal hazard complaints over its toll-free hazard condition complaints live reporting phone line or calls directly to Headquarters, 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 if it appears those complaints allege safety and health hazards to miners. There are no MSHA forms on which hazardous conditions are to be reported. MSHA accepts all written and oral hazardous condition complaints.

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

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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.**

MSHA's records show that 1,807 Metal and Nonmetal (MNM) hazardous conditions complaints (HCC) were received between calendar years 2004-2006. Although the time required by individual miners to prepare a written notification of an alleged violation may vary widely from a few minutes to hours, the average time is estimated to be about 12 minutes (0.2 hour). MSHA's records show that 2,269 Coal HCC were received between calendar years 2004-2006. Although the time required by individual miners to prepare a written notification of an alleged violation may vary widely from a few minutes to hours, the average time is estimated to be about 12 minutes (0.2 hour).

Based on the previous 3-year collection, MSHA estimates it will receive 1,358 complaints (756 Coal + 602 Metal and Nonmetal) annually.

$$1,358 \text{ complaints} \times 0.2 \text{ hour} = 272 \text{ burden hours}$$

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**

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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 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.

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 sent by certified mail, anonymous phone calls, letters, text messages, or emails to MSHA toll free hotline, Headquarters, District or Field Office. In addition, many formal letters of complaint come through a union or safety advocacy organization and those costs are not borne by the individual complainant. Verbally communicated complaints are most often local or over the toll-free MSHA phone line or via e-mails and, as a result, have negligible cost to the complainant. Only the handwritten complaints sent through the U.S. Post Office or private delivery service would incur a cost borne by the complainant and such complaints are rare.

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.

Since 1998, MSHA has maintained an internet website on which e-mail hazardous conditions complaints may be posted. In 2002, MSHA implemented an enhanced e-mail reporting system that provides for electronic voice or written notification of hazardous conditions. Those complaints are handled in the same manner as a telephone complaint. In addition, a return memorandum providing information as to the outcome of the inspection conducted in response to the complaint is required for each written complaint from a miner. These calls initiate a significant portion of the inspection events conducted under 103(g) of the Mine Act.

In 2005, MSHA developed and implemented a web based enterprise system for the documentation, processing, assignment, findings and data reports portion of the hazardous conditions complaints program. This web based system is integrated with MSHA's Mine Safety Information System (MSIS), which allows data from MSIS, such as event numbers, citations, Authorized Representative (AR), Right of Entry personnel (ROE) numbers, complaint arrival, receipt and transfer times, to be tracked and transferred to the web-based enterprise system for MSHA's Hazardous Conditions Complaints.

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In addition, approximately 815 (60% of 1,358) events are initiated by verbal, telephone, or e-mail complaints for which MSHA is responsible for reducing the complaints to writing and forwarding the complaints to the appropriate field office. These activities are usually handled by MSHA hotline, headquarters and district staff members, performing at the GS 12, step 5 level, with a salary of \$30.57/hour. MSHA estimates that each such event consumes 4 hours for MSHA personnel. Therefore, for these activities MSHA labor cost is estimated as follows:

$$1,358 \text{ events} \times 60\% \times 4 \text{ hours/event} \times \$30.57 = \$99,633$$

Total Federal labor cost: \$99,633

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

The increase of 71 burden hours (from 201 to 272) is due to an increase in the number of responses and complaints received (from 1,003 to 1,358). MSHA ran a campaign "One Call Does It All" that notified the mining industry personnel of the hotline number to call if they wanted to report a hazardous condition complaint or an emergency situation at a mine site. In addition to running this campaign, the Sago, Aracoma, and Darby mining disasters increased the public's awareness of the hotline and of the public's ability to report a hazardous condition complaint online via MSHA's website. Since these mining disasters have occurred we have experienced a significant increase in hotline number complaints, online complaints, email complaints, direct phone in complaints to headquarters, and enforcement personnel in the field have stated that they are receiving more hazardous condition complaints from miners while they are onsite conducting mine inspections. In summary, heightened awareness has resulted in more complaints which have improved enforcement efforts and safety conditions for miners.

The burden costs remain at \$0.

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.

MSHA does not publish results from 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.

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

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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.

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.

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 person(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

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".

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 103.(g)(1) Whenever a representative of the miners or a miner in the case of a coal or other mine where there is no such representative has reasonable grounds to believe that a violation of this Act or a mandatory health or safety standard exists, or an imminent danger exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title. If the Secretary determines that a violation or danger does not exist, he shall notify the miner or representative of the miners in writing of such determination.

(2) Prior to or during any inspection of a coal or other mine, any representative of miners or a miner in the case of a coal or other mine where there is no such representative, may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act or of any imminent danger which he has reason to believe exists in such mine. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation or order with respect to such danger and shall furnish the representative of miners or miner requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

Code of Federal Regulations

Title 30. Mineral Resources

Chapter I. Mine Safety and Health Administration, Department of Labor

Subchapter G. Filing and Other Administrative Requirements

Part 43.4 Procedures for Processing Hazardous Conditions Complaints

Subpart B Special Inspections

§ 43.4 Requirements for giving notice.

(a) A representative of miners or, where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or that an imminent danger exists, may obtain a special inspection by giving notice to the Secretary or any authorized representative of the Secretary of such violation or danger.

(b) Any such notice shall set forth the alleged violation or imminent danger and the location of such violation or danger and shall be reduced to a writing signed by the representative of miners or miner giving such notice.

(c) A copy of such written notice shall be provided to the operator or his agent by the Secretary or his authorized representative no later than the time that the inspection begins. In addition, if the notice indicates that an imminent danger exists, the operator or his agent shall be notified as quickly as possible of the alleged danger. The name of the person giving such notice and the names of any individual miners referred to therein shall not appear in the copy of the written notice or in a notification provided to the operator.

SOURCE: 43 FR 29515, July 7, 1978, unless otherwise noted.

AUTHORITY: Secs. 103(g), and 508 of the Federal Mine Safety and Health Act of 1977 Pub.L. 91-173 as amended by Pub.L. 95-164, 91 Stat. 1298 83 Stat. 803 (30 U.S.C. 813(g) and 957); Sec. 307 of the Federal Mine Safety and Health Amendments Act of 1977, Pub.L. 95-164, 91 Stat. 1322 (30 U.S.C. 801 note).

30 C. F. R. § 43.4, 30 CFR § 43.4

Code of Federal Regulations

Title 30. Mineral Resources

Chapter I. Mine Safety and Health Administration, Department of Labor

Subchapter G. Filing and Other Administrative Requirements

Procedures for Processing Hazardous Conditions Complaints

Informal Review

§ 43.7 Informal review upon written notice given to an inspector on the mine premises.

(a) A representative of miners or, where there is no such representative, a miner, who has reason to believe that a violation of the act or a mandatory health or safety standard exists, or an imminent danger exists, may notify an authorized representative of the Secretary in writing prior to or during an inspection conducted by such representative of any violation of the act or mandatory health or safety standard or of any imminent danger which he or she has reason to believe exists in the mine being inspected. Where the authorized representative or the Secretary refuses to issue a citation or order with respect to such alleged violation or imminent danger, the representative of miners or miner may obtain review of such refusal in accordance with paragraphs (b) through (d) of this section.

(b) A request for informal review shall be sent in writing to the appropriate district manager within 10 days of the date of the refusal to issue a citation or order and shall be accompanied by any supporting information the person requesting review wishes to submit.

(c) After receipt of the request for informal review, the district manager or his agent may hold, at his or her discretion, an informal conference where the person requesting review can present his views.

(d) After review of all written and oral statements submitted, the district manager may either affirm the refusal to issue a citation or order or may direct that a new inspection be conducted with respect to the alleged violation or imminent danger. The district manager shall furnish the person requesting review with a written statement of the reasons for his or her final disposition of the request as soon thereafter as possible. A copy of such statement shall be furnished the operator. The district manager's determination in the matter shall be final.

SOURCE: 43 FR 29515, July 7, 1978, unless otherwise noted.

AUTHORITY: Secs. 103(g), and 508 of the Federal Mine Safety and Health Act of 1977 Pub.L. 95-164 as amended by Pub.L. 95-164, 91 Stat. 1298 83 Stat. 803 (30 U.S.C. 813(g) and 957); Sec. 307 of the Federal Mine Safety and Health Amendments Act of 1977, Pub.L. 95-164, 91 Stat. 1322 (30 U.S.C. 801 note).

30 C. F. R. § 43.7, 30 CFR § 43.7

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