

SUPPORTING STATEMENT

Application for Waiver of Surface Facilities Requirements (pertaining to coal mines) 30 C.F.R. §§ 71.403, 71.404, 75.1712-4 and 75.1712-5

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.

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 C.F.R. §§ 71.400 through 71.402 and 75.1712-1 through 75.1712-3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver. Title 30 C.F.R. §§ 71.403, 71.404, 75.1712-4 and 75.1712-5 provide procedures by which an operator may apply for and be granted a waiver. Applications are filed with the District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds upon which the waiver is requested.

Waivers for surface mines may be granted by the District Manager for a period not to exceed one year. If the waiver is granted surface mine operators may apply for annual extensions of the approved waiver. Waivers for underground mines may be granted by the District Manager for the period of time requested by the underground mine operator as long as the circumstances that were used to justify granting the waiver remain in effect. Waivers are not transferable to a successor coal mine operator.

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 information is used to determine if the conditions at a mine make it impractical for the mine operator to provide the required sanitary facilities. The mine operator submits the request for a waiver to the MSHA district in which the mine is located. The district uses this information in determining if the conditions at a mine justify granting the waiver. If the waiver is granted, the information serves as written documentation that the mine operator is not required to comply with the applicable part(s) of the standard(s) covered by the waiver.

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 submit applications for waivers or extensions and retain the records in whatever method they choose, 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.

Since the application is for the purpose of formally stating the operator's desire to waive specific requirements of these regulations, the information in the request for a waiver is unique. No similar information is available. This information collection does not duplicate existing information.

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.

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.

Applications for waivers are made at the option of the mine operator. Without this information, MSHA would require mine operators to comply with the requirements of the regulation. Requiring mine operators to comply with the regulation, where conditions at the mine justify granting a waiver, would pose an unnecessary burden on the affected mine operators.

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;
- 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.

The requirements are 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 June 29, 2007 (Vol 72, Number 125, page 35731), 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 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 estimates that in FY 2006, approximately 157 surface coal mine operators applied for a waiver of the surface facilities requirements outlined in Item 1, and 599 surface coal mine operators requested an extension of a previously approved waiver. In addition, 87 underground coal mine operators applied for a waiver of the surface facilities requirements and no underground coal mine operators applied for an extension of a previously approved waiver. This amounts to approximately 244 initial waiver applicants and 599 applications of extensions of previously approved waivers.

MSHA estimates that it would take each respondent approximately 30 minutes to complete the initial application for a waiver, and 20 minutes to prepare a request for an extension of a previously approved waiver (this includes 10 minutes (0.1667) case for clerical processing). Each application is typically performed by mine supervisory personnel earning an hourly rate of \$62.50 and clerical personnel earning \$21.74 per hour (based on salaries reported in the U.S. Coal Mineral Mine Salaries, Wages and Benefits Survey Results).

Initial Waiver Requests

$$\begin{array}{rcl}
 244 \text{ (87 underground + 157 surface)} & & \\
 \quad \times 0.3333 \text{ (20 minutes)} & = & 81 \text{ hours} \\
 81 \text{ hours} \times \$62.50 & = & \$5,062.50
 \end{array}$$

In addition, 10 minutes of this work is performed by clerical personnel.

$$244 \times 0.1667 \text{ (10 minutes)} = 41 \text{ hours}$$

$$41 \text{ hours} \times \$21.74 = \$891.34$$

Request for Extension of Waiver

$$\begin{aligned} 599 \text{ extensions} \times 0.1667 \text{ (10 minutes)} &= 100 \text{ hours} \\ 100 \text{ hours} \times \$62.50 &= \$6,250.00 \end{aligned}$$

In addition, 10 minutes of this work is performed by clerical personnel at an hourly rate of \$21.74.

$$\begin{aligned} 599 \text{ extensions} \times 0.1667 \text{ (10 minutes)} &= 100 \text{ hours} \\ 100 \text{ hours} \times \$21.74 &= \$2,174.00 \end{aligned}$$

Category	Applications	Minutes	Salary	Total Cost	Total Burden Hours
Initial for management	244	20	\$ 62.50	\$ 5,063	81
Initial for clerical		10	\$ 21.74	\$ 891	41
Extension for management	599	10	\$ 62.50	\$ 6,250	100
Extension for clerical		10	\$ 21.74	\$ 2,174	100
TOTALS	843	//////	//////	\$14,378	322

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.

There are no capital and or start-up costs associated with the collection of this information. There are no costs associated with the operation and maintenance of services associated with this information that is not included 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.

MSHA estimates that it would take a Health Specialist, GS-12 Step 5, about 6 minutes (0.1000 hour) to process each application. The US Office of Personnel Management hourly rate for a GS-12 Step 5 is \$30.57 per hour.

$$843 \text{ applications} \times 0.1000 \text{ hour} = 84 \text{ hours} \times \$30.57 \text{ per hour salary} = \$2,568$$

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

The adjustment increase of 63 burden hours (from 259 to 322) and 181 responses (from 662 to 843) is due to an increase in the number of initial waiver requests and extensions. The number of respondents increased by 618 (from 225 to 843), due to an error in reporting on the last submission. The cost remains at \$0.

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.

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 request.

B. Collection of Information Employment 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 methods 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.

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".

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

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.

30 CFR § 71.403**Waiver of surface facilities requirements; posting of waiver.**

(a) The Coal Mine Health and Safety District Manager for the district in which the mine is located, after consultation with the appropriate Regional Program Director, National Institute for Occupational Safety and Health, may, upon written application by the operator, and after consideration of any comments filed within 30 days after receipt of the application, waive any or all of the requirements for § 71.400 through 71.402 for a period not to exceed 1 year if he determines that

(1) The operator is providing or making available, under arrangements with one or more third parties, facilities which are at least equivalent to those required by the standards, or

(2) It is impractical for the operator to meet the requirement(s) or provide the facility (facilities) for which the waiver is sought.

(b) The waiver shall be in writing and shall set forth the requirement(s) which the operator will not be required to meet or the facilities which the operator will not be required to provide and the specific reason or reasons for such waiver.

(c) Upon receipt of any waiver, the operator shall post a copy of the waiver for at least 30 days on the mine bulletin board required by section 107(a) of the Act.

(d) An extension of the waiver at the end of 1 year may be sought by the operator by filing an application pursuant to § 71.404 no later than 30 days nor more than 60 days prior to the expiration date of the waiver.

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[37 FR 6368, Mar. 28, 1972, as amended at 47 FR 14696, Apr. 6, 1982; 60 FR 33719, June 29, 1995]

30 CFR § 71.404**Application for waiver of surface facilities requirements.**

(a) Application for waivers of any requirements of § 71.400 through 71.402 shall be in writing, filed with the appropriate Coal Mine Health and Safety District Manager, and shall contain the following information:

(1) The name and address of the mine operator,

(2) The name and location of the mine, and

(3) A detailed statement of the grounds upon which the waiver is requested and the

period of time for which it is requested.

(b) At the same time the application is sent to the District Manager, a copy of the application shall be forwarded to the appropriate Regional Program Director, National Institute for Occupational Safety and Health by the operator, and a copy showing the addresses of the appropriate District Manager and Regional Program Director shall be posted by the operator for at least 30 days on the mine bulletin board required by section 107(a) of the Act.

Subpart F--Sanitary Toilet Facilities at Surface Worksites of Surface Coal Mines

30 CFR § 75.1712-4

Waiver of surface facilities requirements.

The Coal Mine Safety District Manager for the district in which the mine is located may, upon written application by the operator, waive any or all of the requirements of § 75.1712-1 through 75.1712-3 if he determines that the operator of the mine cannot or need not meet any part or all of such requirements, and, upon issuance of such waiver, he shall set forth the facilities which will not be required and specific reason or reasons for such waiver.

[35 FR 17890, Nov. 20, 1970, as amended at 47 FR 14696, Apr.6, 1982; 60 FR 33719, June 29, 1995]

30 CFR § 75.1712-5

Application for waiver of surface facilities.

Applications for waivers of the requirements of § 75.1712-1 through 75.1712-3 shall be filed with the Coal Mine Safety District Manager and shall contain the following information:

- (a) The name and address of the mine operator;
- (b) The name and location of the mine;
- (c) A statement explaining why, in the opinion of the operator, the installation or maintenance of the facilities is impractical or unnecessary.