

**SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE
SECURITIES ACT OF 1933,
SECURITIES EXCHANGE ACT OF 1934,
DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

In Release No. 33-9164,¹ the Securities and Exchange Commission (the “Commission”) proposed amendments to certain rule and form requirements to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“the Act”), which requires disclosure of specified mine safety and health violations, orders and citations and related matters.

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the collections of information contained by the proposed amendments are:

“Regulation S-K” (OMB Control No. 3235-0071);²

“Form 10-K” (OMB Control No. 3235-0063);

“Form 10-Q” (OMB Control No. 3235-0070);

“Form 8-K” (OMB Control No. 3235-0060);

“Form 20-F” (OMB Control No. 3235-0288); and

“Form 40-F” (OMB Control No. 3235-0381).

¹ Mine Safety Disclosure, Release No. 33-9164 (December 15, 2010) [75 FR 80374] (“Proposing Release”).

² The paperwork burden from Regulation S-K is imposed through the forms that are subject to the disclosures in Regulation S-K and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience, we estimate the burden imposed by Regulation S-K to be a total of one hour.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the proposed collections of information is to implement the disclosure requirements of Section 1503 of the Act and, to a limited degree, enhance the disclosure requirements set forth in that Section. Specifically, the amendments would require a public company that is an operator, or has a subsidiary that is an operator, of a coal or other mine, to provide disclosure in its periodic reports filed with the Commission of the following:

- The total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977³ (the “Mine Act”) for which the operator received a citation from the Mine Safety and Health Administration (“MSHA”).
- The total number of orders issued under section 104(b) of the Mine Act.
- The total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health and safety standards under section 104(d) of the Mine Act.
- The total number of flagrant violations under section 110(b)(2) of the Mine Act.
- The total number of imminent danger orders issued under section 107(a) of the Mine Act.
- The total dollar value of proposed assessments from MSHA.
- The total number of mining related fatalities.
- A list of mines for which the issuer or a subsidiary received written notice from MSHA of a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of the Mine Act.
- A list of mines for which the issuer or a subsidiary received written notice from MSHA of the potential to have such a pattern of violations of mandatory health or safety standards.
- Any pending legal action before the Federal Mine Safety and Health Commission involving such coal or other mine.
- A brief description of each category of violations, orders and citations reported.

In addition, the amendments would add a new item to Form 8-K to implement the requirement of Section 1503 of the Dodd-Frank Act, which requires companies to file a Form 8-K reporting the receipt of:

- An imminent danger order under section 107(a) of the Mine Act;
- Written notice from MSHA of a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and

³ 30 U.S.C. 801 et seq.

substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of the Mine Act; or

- Written notice from MSHA of the potential to have a pattern of such violations.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

All of the above forms are filed electronically with the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system.

4. DUPLICATION OF INFORMATION

We are not aware of any rules that conflict with or substantially duplicate the proposed rules. However, one disclosure requirement set forth in Section 1503 calls for disclosure of mining-related fatalities, and therefore overlaps to some extent with a disclosure requirement under the rules of MSHA. MSHA requires companies to report to MSHA immediately any death of any individual at a mine.⁴ Section 1503 of the Dodd-Frank Act requires, and the proposed amendments also would require, companies to disclose in their periodic reports any mining-related fatalities that occur during the time period covered by such report.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The disclosure requirement set forth in Section 1503 of the Dodd-Frank Act applies, regardless of whether the Commission adopts rules to implement such requirement, to all companies, including small entities, that are required to file reports with the Commission pursuant to sections 13(a) or 15(d) of the Exchange Act, and that operate, or have a subsidiary that operates, a coal or other mine (as defined in Section 1503 of the Dodd-Frank Act). The proposed disclosure standards implement the disclosure requirements set forth in Section 1503, and propose additional disclosure to provide context for certain items required by Section 1503. The proposed requirements do not vary based on the size of the issuer.

The information called for by Section 1503 of the Dodd-Frank Act and the proposed requirements should be available from a company's books and records, because companies receive the citations, orders and notices directly from MSHA and the information can also be accessed via MSHA's data retrieval system. For these reason, the amendments should not have a significant economic impact on small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The regulations and forms set forth the disclosure requirements for registration periodic and current reports filed by companies to help investors make informed investment

⁴ 30 CFR 50.10.

and voting decisions. Less frequent collection would deprive investors of access to information that is important to their voting and investment decisions.

7. SPECIAL CIRCUMSTANCES

Not applicable.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission has issued a proposing release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the proposing release is attached. In response to the solicitation for comment in the proposing release, registrants, investors, and other market participants provide comments. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission will consider all comments received prior to publishing the final rule as required by 1320.11(f). The public can review comments at <http://www.sec.gov/comments/s7-41-10/s74110.shtml>.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

Not applicable.

12. AND 13. ESTIMATES OF HOUR AND COST BURDENS

The Commission expects that the proposed disclosure amendments would increase the burdens and costs for companies that would be subject to the proposed amendments. Section 1503 of the Dodd-Frank Act has already increased the burdens and costs for issuers by requiring disclosure of specified mine safety and health issues in periodic and current reports. Our proposed amendments would incorporate the Dodd-Frank Act requirements into the Commission’s rules and forms, and would require certain additional disclosure to provide context to the disclosure items required by the Dodd-Frank Act.

We estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 1,677 hours of company personnel time and a cost of approximately \$263,500 for the services of outside

professionals. These estimates include the time and the cost of implementing disclosure controls and procedures, preparing and reviewing disclosure, filing documents and retaining records.

Our annual burden estimates are based on our understanding that the information required to be disclosed is readily available to issuers, and that therefore the burden imposed by the disclosure requirements is mainly in formatting the information in order to comply with our disclosure requirements and ensuring that appropriate disclosure controls and procedures are in place to facilitate reporting of the information. For each reporting company that we anticipate would be affected by the proposed rules, we estimate that the proposed amendments would impose on average the following incremental burden hours:

- 5 hours for the proposed amendments to Form 10-K;
- 5 hours for the proposed amendments to Form 20-F;
- 5 hours for the proposed amendments to Form 40-F;
- 5 hours for the proposed amendments to Form 10-Q
- 1 hour for the proposed amendments to Form 8-K.

1. Form 10-K

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we estimate that, of the 13,545 Form 10-Ks filed annually, approximately 95 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore would be affected by the proposed rule and form amendments. For purposes of the PRA, we assume that each such filer would have disclosures about mine safety violations to include in its Form 10-K.

2. Form 20-F

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we currently estimate that of the 942 Form 20-F annual reports filed annually by foreign private issuers, approximately 15 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore would be affected by the proposed rule and form amendments. For purposes of the PRA, we assume that each such filer would have disclosures about mine safety violations to include in its Form 20-F.

3. Form 40-F

Based on a review of companies filing under certain SICs, as well as a review of

companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we estimate that, of the 205 Form 40-F annual reports filed annually by foreign private issuers, approximately 15 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore would be affected by the proposed rule and form amendments. For purposes of the PRA, we assume that each such filer would have disclosures about mine safety violations to include in its Form 40-F.

4. Form 10-Q

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we estimate that, of the 32,462 Form 10-Qs filed annually, approximately 285 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore would be affected by the proposed rule and form amendments. For purposes of the PRA, we assume that each such filer would have disclosures about mine safety violations to include in its Form 10-Q.

5. Form 8-K

Only companies that are operators, or have subsidiaries that are operators, of coal or other mines (as defined in the Mine Act and subject to the Mine Act) are required to comply with the proposed new Form 8-K requirement. For purposes of the PRA, we estimate that there will be approximately 95 Form 8-K filers under new Item 1.04, which is based on our estimate of the number of Form 10-K filers that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore would be affected by the proposed rule and form amendments. In addition, we understand that the triggering events for Form 8-K filing set forth in Section 1503(b)(2) – the receipt of written notice from MSHA that the coal or other mine has a pattern of violations or the potential to have such a pattern – are very rare, while the triggering event set forth in Section 1503(b)(1) – the receipt of an imminent danger order – is more common.⁵ For purposes of this calculation, we assume that each potential filer under proposed Item 1.04 of Form 8-K would file three Forms 8-K per year under new Item 1.04 and we estimate that the proposed amendments to Form 8-K would add 1 burden hour to the total burden hours required to produce each Form 8-K.

The tables below illustrate the total annual compliance burden of the collection of information in hours and in cost under the proposed amendments for annual reports;

⁵ See U.S. Department of Labor, Office of Inspector General, *In 32 Years MSHA Has Never Successfully Exercised Its Pattern of Violations Authority*, Report Number 05-10-005-06-001 (Sept. 29, 2010). According to data available on MSHA's website, 631 and 562 imminent danger orders under Section 107(a) were issued during fiscal 2010 and 2009, respectively. See Violations Data Set (as of Nov. 12, 2010), available at <http://www.msha.gov/OpenGovernmentData/OGIMSHA.asp> (on file with the Division of Corporation Finance). Note that this number includes all imminent danger orders issued to all companies subject to MSHA's jurisdiction, not only to reporting companies that are subject to the disclosure requirements of Section 1503 of the Act.

quarterly reports and current reports, and Regulation S-K.⁶ The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review the proposed disclosure requirements. For the Exchange Act reports on Forms 10-K, 10-Q and 8-K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. For Forms 20-F and 40-F, we estimate that 25% of the burden of preparation is carried by the issuer internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. There is no change to the estimated burden of the collections of information under Regulation S-K because the burdens that this regulation imposes are reflected in our revised estimated for the forms. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours.

Table 1. Incremental Paperwork Burden under the proposed amendments for annual reports; quarterly reports; and current reports:

	Current Annual Responses (A)	Proposed Annual Responses (B)	Current Burden Hours (C)	Increase/(Decrease) in Burden Hours (D)	Proposed Burden Hours (E) =C+D	Current Professional Costs (F)	Increase/(Decrease) in Professional Costs (G)	Proposed Professional Costs =F+G
Form 10-K	13,545	13,545	21,361,898	356	21,362,254	\$2,848,253,000	\$47,500	\$2,848,300,500
Form 20-F	942	942	622,871	19	622,890	\$743,047,230	\$22,500	\$743,069,730
Form 40-F	205	205	21,884	19	21,903	\$26,260,500	\$22,500	\$26,283,000
Form 10-Q	32,462	32,462	4,559,793	1,069	4,560,862	\$607,972,400	\$142,500	\$608,114,900
Form 8-K	116,860	117,145	502,839	214	503,053	\$67,045,200	\$28,500	\$67,073,700
Total				1,677			\$263,500	

14. COSTS TO FEDERAL GOVERNMENT

We estimate that the cost of preparing the amendments will be approximately \$25,000.

15. REASON FOR CHANGE IN BURDEN

Tables 2A and 2B below illustrate the changes to the total annual compliance burden of the collection of information in hours and cost per response, respectively. The total estimated burdens were calculated by adding the incremental burdens to the existing burdens.

⁶ Figures in both tables have been rounded to the nearest whole number.

Then, the requested burdens and costs per response were calculated by dividing the requested burden estimates by the number of annual responses.

Table 2A: Calculation of Hours Per Response

Form	Existing Annual Responses	Increase (Decrease) in Annual Responses	Current Burden Hours	Program Change: Increase (Decrease) in Burden Hours	Requested Burden Hours	Requested Burden per Response
	(A)	(B)	(C)	(D)	(E) = (C) + (D)	(F) = (D)/(A+B)
10-K	13,545	—	21,361,898	356	21,362,254	1,577.132078
20-F	942	—	622,871	19	622,890	661.242038
40-F	205	—	21,884	19	21,903	106.843
10-Q	32,462	—	4,559,793	1,069	4,560,862	140.49849
8-K	116,860	285	502,839	214	503,053	4.29427

Table 2B: Calculation of Cost Per Response

Form	Existing Annual Responses	Increase (Decrease) in Annual Responses	Current Cost Burden	Program Change: Increase (Decrease) in Cost Burden	Requested Cost Burden	Proposed Cost per Response
	(A)		(B)	(C)	(D) = (B) + (C)	(E) = (D)/(A)
10-K	13,545	—	\$2,848,253,000	\$47,500	\$2,848,300,500	\$210,284.274640
20-F	942	—	\$743,047,230	\$22,500	\$743,069,730	\$788,821.36942
40-F	205	—	\$26,260,500	\$22,500	\$26,283,000	\$128,209.756
10-Q	32,462	—	\$607,972,400	\$142,500	\$608,114,900	\$18,733.13104
8-K	116,860	285	\$67,045,200	\$28,500	\$67,073,700	\$572.56989

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. DISPLAY OF OMB APPROVAL DATE

Not applicable.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Not applicable.

B. STATISTICAL METHODS

Not applicable.