

Supporting Statement

Information Collection Title: Petitions for Modification of Mandatory Safety Standards

OMB CONTROL	30 CFR Provision	CFR Title
1219-0065	44.9	Posting of petition
	44.10	Filing of petition; service
	44.11	Contents of petition

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(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Section 101(c), 30 U.S.C. Section 811(c), provides that a mine operator or a representative of miners may petition the 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 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 (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

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.

MSHA accepts but does not require electronic submission of petitions for modification. Approximately 6 percent of the submissions were submitted electronically over the last 3-year period. 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. 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, 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.

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 secrets, 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.**

Title 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 date 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.

In accordance with 5 CFR 1320.8(d), MSHA will publish the proposed information collection requirements in the Federal Register, notifying the public that these information collection requirements are being reviewed in accordance with the Paperwork Reduction Act of 1995, and giving interested persons 60 days to submit comments.

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.

No assurance of confidentiality is 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.**

*** 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 under Item 13.**

MSHA records indicate that 70 mine operators submit 1 petition each for modification per year for coal and metal and nonmetal (MNM) mines. MSHA estimates that approximately 80 percent of those petitions (56 petitions) are prepared by mine operators and 20 percent (14 petitions) are prepared by third-party sources. Of the 56 petitions coal mine operators prepare 54 and MNM prepare 2 petitions. MSHA does not anticipate a significant increase or decrease in the number of petitions for modification received over the next several years. MSHA estimates that it takes approximately 40 hours to prepare and electronically submit each petition for modification. MSHA used data from the May 2017 Occupational Employment Statistics (OES) published by the Bureau of Labor Statistics (BLS) for hourly wage rates¹ and adjusted the rates for benefits² and wage inflation³.

Burden hours:

54 coal petitions x 40 hours/petition =	2,160 hours
2 MNM petitions x 40 hours/petition=	<u>80 hours</u>
Total	= 2,240 hours

Burden hour cost⁴:

1 Options for obtaining OES data are available at item "E3. How to get OES data. What are the different ways to obtain OES estimates from this website?" at https://www.bls.gov/oes/oes_ques.htm.

2 The benefit-scaler comes from BLS Employer Costs for Employee Compensation access by menu <http://www.bls.gov/data/> or directly with <http://download.bls.gov/pub/time.series/cm/cm.data.0.Current>. The data series CMU2030000405000P, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average 2017Qtr3-2018Qtr2 to determine that 32.9 percent of total loaded wages are benefits. MSHA computes the scaling factor with a number of detailed calculations but it may be approximated with the formula and values $1 + (\text{benefit percentage}/(1-\text{benefit percentage})) = 1 + (.329/(1-.329)) = 1.49$.

3 Wage inflation is the change in Series ID: CIS2020000405000I; Seasonally adjusted; Series Title: Wages and salaries for Private industry workers in Construction, extraction, farming, fishing, and forestry occupations, Index. (<https://data.bls.gov/cgi-bin/srgate>; Qtr 2 2018/Qtr 2 2017=1.027).

4 Supervisor Wages are the employment weighted average for 4 Standard Occupational Classification Codes (SOC) for 4 separate occupational groups from the BLS May 2017 OES data. The coal supervisor wage is for NAICS 212100 – Coal Mining (\$55.33=\$36.16 x 1.49 benefit adjustment x 1.027 inflation adjustment) and the MNM supervisor rate is for NAICS 212200 - Metal Ore Mining and NAICS 212300 - Nonmetallic Mineral Mining and Quarrying. Weighted average rates (\$52.35=\$34.21 x 1.49 benefit adjustment x 1.027 inflation adjustment.)

Coal:	2,160 hours x \$55.23 per hour coal supervisor	= \$119,513
MNM:	80 hours x \$52.35 per hour MNM supervisor	= <u>\$4,188</u>
	Total	= \$123,701

The burden on mine operators to post copies of the petition for modification at the mine is minimal and therefore, no cost burden is assigned to these requirements.

TOTAL BURDEN HOURS = 2,240 hours
TOTAL BURDEN HOUR COSTS = \$123,701

13. Provide an estimate for 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 already reflected in the burden worksheet).

*** 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 collections 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 percent of the petitions for modification (14 petitions) are prepared by independent legal counsel, and that it takes approximately 16 hours to prepare a petition. The average hourly rate of independent counsel⁵ is

⁵ External counsel wage rate age is for the Standard Occupational Classification Code (SOC) 23-1011 from the BLS May 2017 OES data for NAICS 213100 - Support Activities for Mining (rate \$155.95=\$102.11 x 1.49 benefit adjustment x 1.027 inflation adjustment).

estimated to be \$155.95 per hour.

14 petitions x 16 hours per petition = 224 hours

224 hours x \$155.95 per hour = \$34,933

MSHA estimates that approximately 14 petitions are submitted by mail. Electronic submission was included in the average cost in Question 12.

Estimated mailing costs for petitions for modification (8 ounces of first class mail + certified mail charge from USPS website \$6 each):

14 petitions x \$6.00 per petition = \$84

TOTAL COST BURDEN = \$35,017

14. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

Wage rate estimates in this answer are from [fedscope.opm.gov, March 2018 Employment cube](https://www.fedscope.opm.gov/employment.asp) (<https://www.fedscope.opm.gov/employment.asp>). OPM FedScope annual rates are converted to loaded hourly rates by the following formula: loaded rate = occupation annual rate/2087 x load factor from MSHA 2019 budget.

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 GS 11 administrative staff person approximately three hours to prepare:

70 notices x 3 hours per notice = 210 hours

210 hours x \$46.43 per hour = \$9,750

The Microsoft Word submission cost for publication of the notice of receipt and summary of petitions granted in the Federal Register is \$151 per column. Petition-related notices average 3 petitions per column.

70 petition notices x 1/3 column per notice x \$151 per column = \$3,523

Of the 70 petitions for modification that are received, MSHA estimates that approximately 55 percent (39 petitions) are approved. The cost to MSHA of publishing notices of approved petitions is as follows:

39 petition notices x 1/3 column/notice x \$151 per column = \$1,938

The investigation and preparation of the investigative report for each petition for modification filed with MSHA takes an Agency inspector (GS 12) approximately 40 hours. Travel expenses are not included because inspectors are frequently at the mines.

70 investigations x 40 hours per investigation = 2,800 hours

2,800 hours x \$56.34 per hour = \$157,752

Mailing costs:

70 investigative reports x \$6.00 per report = \$420

MSHA estimates that review of the petition for modification and investigative report, and preparation of a proposed decision takes an MSHA government Specialist (GS 13) 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.

35 petitions x 24 hours = 840 hours

35 petitions x 2.5 hours = 88 hours
928 hours

928 hours x \$69.21 per hour = \$64,227

Additionally, MSHA estimates that review of the petition for modification and investigative report and review of MSHA's proposed decision takes a Department of Labor government staff attorney (GS 14) approximately 2.5 hours per petition for half of the petitions and approximately 8 hours for the remaining petitions.

35 petitions x 8 hours = 280 hours

35 petitions x 2.5 hours = 88 hours
368 hours

368 hours x \$86.680 per hour = \$31,898

Total Cost to the Federal Government = \$269,508

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

The number of respondents decreased from 68 to 56 and responses decreased from 68 to 56. Due to the decrease in respondents and responses, burden hours decreased

from 2,720 to 2,240.

The total cost burden to the mine operators increased (from \$24,916 to \$35,017) due to some offset increase in wage rates and decreased number of petitions.

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.

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 topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no certification exceptions identified with this information collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of this information does not employ statistical methods.

Federal Mine Safety & Health Act of 1977 (the Mine 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.

ADMINISTRATIVE PROCEDURES

SEC. 507. Except as otherwise provided in this Act, the provisions of sections 551-559 and sections 701-706 of title 5 of the United States Code shall not apply to the making of any order, notice, or decision made pursuant to this Act, or to any proceeding for the review thereof.

30 CFR PART 44 - RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS

Section 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.

Section 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 Boulevard, 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.

Section 44.11 Contents of petition.

(a) A petition for modification filed pursuant to [section 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.