

## **SUPPORTING STATEMENT**

**Information Collection Title:** Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines)

**Authority:** 30 CFR 71.403, 71.404, 75.1712-4, and 75.1712-5

**Collection Instrument(s):** None

### **General Instructions**

**A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the *Federal Register*, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses or employ statistical methods" is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.**

### **Specific Instructions**

#### **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(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 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.

Title 30 CFR 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 by miners. If the operator is unable to meet any or all of the requirements, the operator may apply for a waiver. Sections

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 on 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 District Manager in the MSHA district in which the mine is located. The District Manager 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 standard 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, 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 using 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's purpose is for the operator to formally request a waiver of the specific requirements of these standards on a mine by mine basis, 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, 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 standards. Requiring mine operators to comply with the standards, 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; 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.

The requirements are consistent with the 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.**

MSHA published a 60-day *Federal Register* notice on January 2, 2020 (85 FR 134). MSHA received no public 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.**

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.**

**\* 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 'Annual Cost to Federal Government'.**

Hourly wages in this answer are from Bureau of Labor Statistic (BLS), Occupational Employment Statistics (OES) May 2018 survey.<sup>1</sup> MSHA increased the OES hourly wage rates for benefits and inflation by a 1.49 benefit-scaling factor and 1.028 inflation factor to obtain fully loaded wages.<sup>2</sup>

MSHA estimates that in the time period between October 1, 2018 and September 30, 2019, approximately 306 surface coal mine operators applied for a waiver of the surface sanitary facilities' requirements outlined in Item 1, and 184 surface coal mine operators requested an extension of a previously approved waiver. In addition, 33 underground coal mine operators applied for a waiver of the surface sanitary facilities' requirements and 2 underground coal mine operator applied for an extension of a previously approved waiver. This amounts to approximately 339 initial waiver applicants and 186 applications for extensions of previously approved waivers.

MSHA estimates that it would take each respondent approximately 20 minutes to complete the initial application for a waiver, 10 minutes to prepare a request for an extension of a previously approved waiver, and 10 minutes for clerical processing of each initial and extension waiver application. A mine supervisor earning \$61.48 per

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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#howto](https://www.bls.gov/oes/oes_ques.htm#howto)

2 For all wage rates, MSHA uses the relevant precision throughout the calculation to avoid compound rounding errors and rounding at the final rate value. Displayed intermediate calculation values are presented to explain the calculation and are representative but the final rate value reflects the correct rounding and final estimate.

hour<sup>3</sup> and a clerical employee earning \$26.68 per hour<sup>4</sup> typically prepare and process the application.

*Initial Waiver Requests*

339 (306 surface + 33 underground) operators x 20 minutes =113 hours  
 113 hours x \$61.48 = \$6,947

339 x 10 minutes = 57 hours  
 57 hours x \$26.68 = \$1,521

**Total Burden Hours:** 113 hours + 57 hours = 170 hours  
**Total Burden Cost:** \$6,947 + \$1,521 = \$8,468

*Request for Extension of Waiver*

186 extensions x 10 minutes = 31 hours  
 31 hours x \$61.48 = \$1,906

186 extensions x 10 minutes = 31 hours  
 31 hours x \$26.68 = \$827

**Total Burden Hours:** 31 hours + 31 hours = 62 hours  
**Total Burden Cost:** \$1,906 + \$827 = \$2,733

**Total Cost for Applications for Waivers or Extension of Waivers**

<b>Summary Table Answers for Question 12</b>			
<b>Category</b>	<b>Responses</b>	<b>Burden Hours</b>	<b>Burden Costs</b>
Initial Waiver Request	339	170	\$8,468
Request for Extension of Waiver	186	62	\$2,733
<b>Total</b>	<b>525</b>	<b>232</b>	<b>\$11,201</b>

<sup>3</sup>

For a coal mine supervisor hourly wage rate, MSHA used the employment weighted mean hourly wage from the OES May 2018 survey, for 4 First-Line Supervisor occupations from SOC major group code 47, 49, 51, and 53 and industry codes 212100 of the North American Industry Classification System (NAICS) codes historically represented in the approval requests. The weighted mean wage is adjusted for benefits and inflation to obtain a fully loaded rate of \$61.48 (\$40.14 x 1.49 x 1.028). All subsequent uses of \$61.48 represent supervisor hours.

<sup>4</sup> For the clerical worker hourly wage rate, MSHA used the employment weighted mean hourly wage from the OES May 2018 survey, for 3 clerical worker occupations from the SOC major group code 43 and industry codes 212100 of the North American Industry Classification System (NAICS) codes historically represented in the approval requests. The weighted mean was adjusted for benefits and inflation to obtain a fully loaded rate of \$26.68 (\$17.42 x 1.49 x 1.028). All subsequent uses of \$26.68 represent clerical hours.

**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 on 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 the cost for office supplies and postage would be less than \$5 per application. The burden cost associated with applications for waivers or extensions of waivers would be as follows:

525 (339 initial + 186 extension) waiver applications x \$5 per application = **\$2,625**

**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) earning \$56.62 per hour including benefits, about 6 minutes to process each application.<sup>5</sup>

525 applications x 6 minutes x \$56.62 per hour = **\$3,001**

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

EXPLANATION OF CHANGE OF TOTALS

*Respondents:* The number of respondents decreased from 731 to 525 due to the decline in the number of mines submitting waiver requests and applications extensions.

*Responses:* The number of responses decreased from 731 to 525 due to the decline in the number of respondents.

*Burden Hours:* The total annual burden hours has decreased from 301 to 232 due to the reduction in the number of applications.

*Costs:* Total annual burden cost decreased from \$3,655 to \$2,625 due to the reduction in the number of applications.

**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.**

MSHA associates no forms with this collection.

**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 request.

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<sup>5</sup> Hourly wage rate developed from Office of personnel Management (OPM) March 2018 *FedScope* employment cube, <http://www.fedscope.opm.gov/> . Average annual salary of \$84,469 obtained from DOL-MSHA employees. Data search qualifiers are: agency = DLMS, occupation = 1822, Full Time, Salary Grade = GS-12. In order to include the cost of benefits, the average annual salary was multiplied by a benefit scaler of 1.399. [\$56.62 = (\$84,469 x 1.399) ÷ 2,087 annual h.]



OMB No. 1219-0024

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2020

**B. Collection of Information Employing Statistical Methods**

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