

Application for Waiver of Surface Sanitary Facilities' Requirements
OMB Control Number 1219-0024
OMB Expiration Date: 10/31/2023

Supporting Statement for Paperwork Reduction Act Submission

This ICR seeks to extend, without change, an existing information collection request.

OMB Control Number: 1219-0024

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

Authority: 30 CFR 71.403 Waiver of surface facilities requirements; posting of waiver.
30 CFR 71.404 Application for waiver of surface facilities requirements.
30 CFR 75.1712-4 Waiver of surface facilities requirements.
30 CFR 75.1712-5 Application for waiver of surface facilities.

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.

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30 CFR 71.400, 30 CFR 71.401 and 30 CFR 71.402 and 30 CFR 75.1712-1, 30 CFR 75.1712-2 and 30 CFR 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. 30 CFR 71.403, 30 CFR 71.404, 30 CFR 75.1712-4, and 30 CFR 75.1712-5 provide procedures by which an operator may apply for and be granted a waiver. Applications are in writing, filed with the Coal Mine Health and Safety 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. 30 CFR 71.403 requires coal mine operators to post a copy of the waiver for at least 30 days on the mine bulletin upon receipt of any waiver.

Waivers for surface mines may be granted by the District Manager for a period not to exceed 1 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 (GPEA), 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.

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. MSHA published a 60-day Federal Register notice on March 21, 2023 (88 FR 54). No comments 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.**
- **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'.**

PRA Respondents

Over the three-year period from 2019 to 2021, 215 coal mine operators applied for an initial waiver of the sanitary facilities requirements listed in Item 1, while 343 applied for the extension of an existing waiver. Based on these three previous calendar years of waiver applications, MSHA estimates that there are an average of 186 $(=(215+342)/3)$ coal mines that need to submit an initial or extension waiver application each year, of which 72 $(=215/3)$ are initial applications for waiver of the surface sanitary facilities' requirements, and 114 $(=343/3)$ are applications for extensions of a previously approved waiver.

Item 1

	2019	2020	2021	Total
Surface Coal Mines				
Initial Applications	55	61	60	176
Extension Applications	137	100	106	342
Underground coal Mines				
Initial Applications	17	13	9	39
Extension Applications	0	0	0	0
Total Coal Mines				
Initial Applications	72	74	69	215
Extension Applications	137	100	106	342

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Wage Rates Determinations¹

MSHA used data from the May 2021 Occupational Employment and Wage Statistics (OEWS) published by the Bureau of Labor Statistics (BLS) for hourly wage rates² and adjusted the rates for benefits³ and wage inflation⁴. The occupations listed below in Table 12-1 are those that were determined to be relevant for the cost calculations.

Table 12-1 Hourly Wage Rates for Coal Mines

Occupation	NAICS Code	A Mean Wage Rate	B Benefit Multiplier	C Inflation Multiplier	A x B x C Loaded Hourly Wage Rate
Mining Supervisor*	212200	\$47.92	1.490	1.043	\$74.47
Clerical Employee**	212200	\$20.78	1.490	1.043	\$32.29

Note: MSHA used the latest 4-quarter moving average 2021Q3-2022Q2 to determine that 32.9 percent of total loaded wages are benefits. The inflation multiplier of 1.043 was determined by using the employment price index from the most current quarter data is available, 2022Q2, divided by the base year and quarter of the OEWS employment and wage statistics, 2021Q2.

*The Standard Occupation Codes used for this occupation are (47-1011), (49-1011), (51-1011), and (53-1047).

** The Standard Occupation Codes used for this occupation are (43-6014) and (43-9061).

A. Initial Application for Waiver (§71.403, §71.404, §71.1712-4, and §71.1712-5)

30 CFR 71.400, 30 CFR 71.401 and 30 CFR 71.402 and 30 CFR 75.1712-1, 30 CFR 75.1712-2 and 30 CFR 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. 30 CFR 71.403, 30 CFR 71.404, 30 CFR 75.1712-4, and 30 CFR 75.1712-5 provide procedures by which an operator may apply for and be granted a waiver.

MSHA estimates that it takes a coal supervisor, earning \$74.47 per hour, 20 minutes to complete the initial application for a waiver and a clerical employee, earning \$32.29 per hour, 10 minutes to process an application.

¹ For all wage rates, MSHA uses the relevant precision throughout the calculation to avoid compound rounding errors and rounds 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.

² Options for obtaining OEWS data are available at item "E3. How to get OEWS data. What are the different ways to obtain OEWS estimates from this website?" at https://www.bls.gov/oes/oes_ques.htm.

³ The benefit multiplier comes from BLS Employer Costs for Employee Compensation accessed by menu at <http://data.bls.gov/cgi-bin/srgate> or directly with <http://download.bls.gov/pub/time.series/cm/cm.data.0.Current>. Insert the data series CMU2030000405000D and CMU2030000405000P, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, which is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average to determine what percent of total loaded wages are benefits. MSHA computes the benefit multiplier with a number of detailed calculations, but it may be approximated with the formula $1 + (\text{benefit percentage} / (1 - \text{benefit percentage}))$.

⁴ 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> ; Inflation Multiplier = (Current Quarter Cost Index Value / OEWS Wage Base Quarter Index Value).

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Table 12-2 Estimated Annual Respondent Hour and Cost Burden, Initial Application Waiver

Occupation	Respondents (Mines)	Responses per Respondent	Total Responses (Applications)	Avg. Burden per Response (Minutes)	Total Annual Burden (Hours)	Avg. Hourly Wage Rate	Total Annual Cost
Mine Supervisor	72	1	72	20.00	24.00	\$74.47	\$1,787.36
Clerical Employee	72	1	72	10.00	12.00	\$32.29	\$387.45
<i>Subtotal</i>	72		72		36		\$2,175

B. Extension Application for Waiver (§71.403, §71.404, §71.1712-4, and §71.1712-5)

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.

MSHA estimates that it takes a coal supervisor, earning \$74.47 per hour, 10 minutes to complete the extension application for a waiver and a clerical employee, earning \$32.29 per hour, 10 minutes to process an application.

Table 12-3 Estimated Annual Respondent Hour and Cost Burden, Extension Application Waiver

Occupation	Respondents (Mines)	Responses per Respondent	Total Responses (Applications)	Avg. Burden per Response (Minutes)	Total Annual Burden (Hours)	Avg. Hourly Wage Rate	Total Annual Respondent Cost
Mine Supervisor	114	1	114	10.00	19.00	\$74.47	\$1,414.99
Clerical Employee	114	1	114	10.00	19.00	\$32.29	\$613.46
<i>Subtotal</i>	114		114		38		\$2,028

MSHA estimates that the 186 respondents (mine operators) would incur, on average, an annual collection burden of 74 hours with an associated annual cost of \$4,203.

Table 12-4 Total Estimated Respondent Hour and Cost Burden, OMB #1219-0024

Cost Component	Respondents	Total Responses	Annual Burden (Hours)	Total Burden Cost
Initial Application Waiver	72	72	36.00	\$2,174.81
Extension Application Waiver	114	114	38.00	\$2,028.45
Total	186	186	74	\$4,203

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 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 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.**

A. Initial and Extension Applications for Waiver (§71.403, §71.404, §71.1712-4, and §71.1712-5)

30 CFR 71.403 requires coal mine operators to post a copy of the waiver for at least 30 days on the mine bulletin board upon receipt of any waiver. 30 CFR 71.404 and 30 CFR 75.1712-5 require applications for waivers to be filed in writing with the District Manager.

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MSHA estimates that the cost for office supplies and postage would be no more than \$5 per application. The burden cost associated with applications for initial waivers or extensions of waivers would be as follows:

Table 13-1 Estimated Annual Respondent Recordkeeping Cost Burden

Cost Component	No. of Responses	Cost per Copy	Burden Cost
Postage & Shipping Costs	186	\$5.00	\$930.00
Total	186		\$930

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.

Table 14-1 Federal Hourly Wage Rates

		A	B	= A x B
Occupation	Occupation Code	Mean Wage Rate	Benefit Multiplier	Loaded Hourly Wage Rate
GS-12 MSHA Health Specialist*	1822	\$45.48	1.440	\$65.49

Note: Hourly wage rates developed from Office of Personnel Management (OPM) June 2022 FedScope Employment Cube, <http://www.fedscope.opm.gov/>.

* Data search qualifiers were: Agency = DLMS, Occupation = 1822 (Health Specialist), Work Schedule = Full-Time, Salary Grade = GS-12, Measure = Average Salary. The hourly wage is the annual salary divided by 2,087. In order to include the cost of benefits, MSHA multiplied the average annual salary by a federal benefit scaler for MSHA of 1.440 (FY 2022 budget submission). Rate equals \$65.49 = (\$94,919.25 / 2,087 x 1.440).

A. Federal Hour and Cost Burden, Initial and Extension Applications for Waiver (§71.403, §71.404, §71.1712-4, and §71.1712-5)

Under 30 CFR 71.403, each operator of a coal mine who is required to send the MSHA District Manager an application describing the arrangements for sanitary facilities that are at least equivalent to those required by the standards or how it is impractical for the operator to meet the requirements. Further requirements for the information provided in the application, such as the length of the waiver request and the relevant mine information are described in 30 CFR 71.404, 30 CFR 75.1712-4, and 30 CFR 75.1712-5.

MSHA estimates that it takes an Agency Health Specialist (GS-12) earning \$65.49 per hour including benefits, approximately 6 minutes to review an application for such a waiver.

Table 14-2 Estimated Federal Hour and Cost Burden, Rescue Team Compliance Statement

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Occupation	Responses Reviewed	Burden per Response (Minutes)	Annual Burden (Hours)	Hourly Wage Rate	Burden Cost
GS-12 MSHA Health Specialist	186	6.00	18.60	\$65.49	\$1,218.17
Subtotal	186		19		\$1,218

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

Respondents: The number of respondents decreased from 525 to 186 due to the decline in the number of coal mines.

Responses: The number of responses decreased from 525 to 186 due to the decline in the number of respondents.

Burden Hours: The number of burden hours decreased from 232 to 74 due to the decreases in responses.

Respondents or Recordkeeping Costs: The estimated annual cost decreased from \$2,625 to \$930 due to a decrease in the number of respondents.

Table 15-1 Program Changes or Adjustments for OMB #1219-0024

	Previous	Current	Difference
Respondents	525	186	-339
Responses	525	186	-339
Burden Hours	232	74	-158
Respondents or Recordkeepers Costs	\$2,625	\$930	-\$1,695

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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B. Collection of Information Employing Statistical Methods

There is no statistical methodology involved in this collection.