

SUPPORTING STATEMENT

30 CFR Part 75.1716, 75.1716-1 and 75.1716-3, Operations Under Water (pertain to underground coal mines)

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

Title 30 C.F.R. § 75.1716, 75.1716-1 and 75.1716-3 require operators of underground coal mines to provide MSHA notification before mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. This is a statutory provision contained in Section 317(r) of the Federal Mine Safety and Health Act of 1977. The regulation is necessary to prevent the inundation of underground coal mines with water which has the potential of drowning miners.

The coal mine operator submits an application for the permit to the District Manager in whose district the mine is located. Applications contain the name and address of the mine; projected mining and ground support plans; a mine map showing the location of the river, stream, lake or other body of water and its relation to the location of all working places; a profile map showing the type of strata and the distance in elevation between the coal bed and the water involved. MSHA has provided an exemption from notification and permit application for mine operators where the projected mining is under any water reservoir being constructed by a Federal agency as of December 30, 1969, and where the operator is required by such agency to operate in a manner that adequately protects the safety of miners. The exemption for such mining is addressed by 30 C.F.R. §75.1716 and 75.1717.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for new collections, indicate the actual use the agency has made of the information received from the current collection.

Before issuing a permit, MSHA makes a detailed analysis of the data concerning the strata between the body of water and the proposed mine workings to determine if the mine workings can be driven safely.

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

March 8, 2004

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, permit applications submitted under 30 CFR 75.1716 to mine under bodies of water are type written notices consisting of narratives, descriptions, lists, tables and drawing. These documents can be prepared using Personal Computers, automated drafting programs and word processing programs and submitted via E-mail, where the mine operator has the capability of affixing transmittable authorization signatures or where the E-mail or facsimile is followed by a signed hard copy. However, neither the use of nor absence of access to electronic media significantly effect the burden imposed by the standard.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.

No similar or duplicate information exists. Permits are issued on a mine by mine basis.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

This information does not have a significant impact on small businesses or other small entities. However, MSHA has made available on our web-site various sources of information, such as "Technical Assistance," "Best Practices," and an "Accident Prevention" site. To assist with compliance, these provide tips and general information on a number of various topics.

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.

The mine operator files a request in writing with the appropriate MSHA District Manager. MSHA makes a detailed analysis to determine if the tunnel can be driven safely.

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

March 8, 2004

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 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.

This collection of information is consistent with the guidelines in 5 C.F.R. § 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 the 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.

March 8, 2004

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

MSHA has made no decision to provide payment or gifts to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No records requiring confidentiality are required.

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.

A mine operator must notify the MSHA district manager of plans to conduct mining under a body of water and apply for a permit before conducting such mining. Typically, the permit application is submitted at the recommendation of MSHA at the time that MSHA conducts its annual review of mining projections submitted by the mine operator in accordance with 30 C.F.R. §75.371 and 75.1203.

MSHA estimates that there are currently 117 coal mines with permits to operate under water. In addition, MSHA estimates that
March 8, 2004

there would be 36 revised permit applications submitted each year that would incorporate procedures for mining under water. Accordingly, MSHA estimates that it would take an average of 5 hours to prepare a revised permit application.

36 applications x 5 hours/application = 180 burden hours

Permit applications contain mining projections, proposed roof support systems, and an analysis of the potential for inundation based upon the type of strata separating the proposed workings from the body of water. Such information is compiled by geological or mining engineers or engineering consultants. MSHA estimates an hourly rate for such technical personnel (U.S. Coal Mine Salaries, Wages and Benefits -2002 Survey Results, Western Mine Eng, Inc./weighted average for coal supervisors) to be \$58.96 per hour.

MSHA, further estimates that the annual cost associated with the operators burden hours to be:

180 burden hours x \$58.96/hr. = \$10,613

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 an hour burden shown in Items 12 and 14).

No equipment must be purchased specifically for the purpose of providing/gathering the information required by these standards. The notices and permit application are prepared on office equipment and or engineering equipment maintained at the mine for normal business activities.

However, since these documents are mandatory requirements most if not all are sent to MSHA by certified mail so that a record of delivery is secured by the mine operator(s). Assuming that each of the permit applications is submitted by certified mail, the operators will incur additional transmittal costs estimated at

\$15.00 per package x 36 applications = \$540.

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 approximately 36 applications are received each year. MSHA estimates it takes approximately 16 hours to review the application and issue a permit or deny approval of the permit application. MSHA utilizes GS-12/13, step 5 Mining

March 8, 2004

Engineers for such reviews. The average salary for such technical personnel based on the FY 2004 GS Wage Schedule (GS 12/5 - \$28.73/hr. and GS 13/5 - \$34.16) Therefore, the average salary of an MSHA Mining Engineer reviewing applications is approximately \$31.45 per hour.

36 applications x 16 hours x \$31.45 = \$18,115.

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

MSHA has determined that the increase of 130 hours in burden hours (from 50 to 180) associated with notices and permit applications reflects an increase in the number of new underground coal mines or under-reporting from last review.

MSHA also reports an increase of \$1k cost burden. These cost were not previously reported on the OMB Form 83-I.

16. For collections of information whose results are planned to 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.

Since there are no forms on which to display the expiration date, MSHA is not seeking approval to either display or not display the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

There are no certification exceptions identified with this information collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Describe (including numerical estimate) the potential respondent universe and any sampling or other respondent selection method 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

March 8, 2004

conducted previously, include the actual response rate achieved during the last collection.

This information does not employ statistical methods.

March 8, 2004

Agency: Mine Safety and Health Administration

Title: Operations Under Water

OMB Number: 1219-0020 Extension

Frequency: On Occasion

Affected Public: Business or other for-profit.

Number of Respondents: 36

Estimated Time Per Respondent: 5 Hours

Total Burden Hours: 180 Hours

Total Annualized Capital/startup Costs: \$0

Total Annual (operating/maintaining): \$0

Description: 30 CFR 75.1716, 75.1716-1 and

75.1716-3 require coal mine operators to provide MSHA notification and to obtain a permit to mine under a body of water if, in the judgment of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

**Federal Mine Safety & Health Act of 1977,
Public Law 91-173,
as amended by Public Law 95-164***

An Act

MISCELLANEOUS

SEC. 317. (r) Whenever an operator mines coal from a coal mine opened after the operative date of this title, or from any new working section of a mine opened prior to such date, in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, that is, in the judgment of the Secretary, sufficiently large to constitute a hazard to miners, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to such body of water. No plan shall be approved unless there is a minimum of cover to be determined by the Secretary, based on test holes drilled by the operator in a manner to be prescribed by the Secretary. No such permit shall be required in the case of any new working section of a mine which is located under any water resource reservoir being constructed by a Federal agency on the date of enactment of this Act, the operator of which is required by such agency to operate in a manner that adequately protects the safety of miners working in such section from cave-ins and other hazards.

Title 30 **Parts 1-199 Mineral Resources**
Department of Labor
Mine Safety and Health Administration
Code of Federal Regulations

30 CFR § 75.1716

Operations under water.

[STATUTORY PROVISIONS]

Whenever an operator mines coal from a coal mine opened after March 30, 1970, or from any new working section of a mine opened prior to such date, in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, that is, in the judgment of the Secretary, sufficiently large to constitute a hazard to miners, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to such body of water. No plan shall be approved unless there is a minimum of cover to be determined by the Secretary, based on test holes drilled by the operator in a manner to be prescribed by the Secretary. No such permit shall be required in the case of any new working section of a mine which is located under any water resource reservoir being constructed by a Federal agency on December 30, 1969, the operator of which is required by such agency to operate in a manner that protects the safety of miners working in such section from cave-ins and other hazards.

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

30 CFR § 75.1716-1

Operations under water; notification by operator.

An operator planning to mine coal from coal mines opened after March 30, 1970, or from working sections in mines opened prior to such date, and in such manner that mining operations will be conducted, or tunnels constructed, under any river, stream, lake, or other body of water, shall give notice to the Coal Mine Safety District Manager in the district in which the mine is located prior to the commencement of such mining operations.

30 CFR § 75.1716-3

Applications for permits.

An application for a permit required under this section shall be filed with the Coal Mine Safety District Manager and shall contain the following general information:

- (a) Name and address of the company.
- (b) Name and address of the mine.
- (c) Projected mining and ground support plans.
- (d) A mine map showing the locations of the river, stream, lake, or other body of water and its relation to the location of all working places.
- (e) A profile map showing the type of strata and the distance in elevation between the coal bed and the river, stream, lake or other body of water involved. The type of strata shall be determined by core test drill holes as prescribed by the Coal Mine Safety District Manager.