

United Mine Workers of America



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October 2, 2012

Mr. Greg Moxness, Chief
Economic Analysis Division
Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, VA 22209-3939

Re: OMB Control Number 1219-0065

Dear Mr. Moxness:

Attached are the comments of the United Mine Workers of America on the above-named Proposed Extension of Existing Information Collection; Petitions for Modification of Mandatory Safety Standards. I ask that you forward a copy of our comments to the appropriate persons in your Agency for consideration.

Should you have any questions concerning this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Dennis O'Dell".

Dennis O'Dell, Administrator
Department of Occupational Health & Safety

**Comments of the United Mine Workers of America
On the Proposed Information Collection Request Submitted for Public Comment
and Recommendations; Petitions for Modification of Mandatory Safety
Standards
October 2, 2012**

MSHA indicates that this proposal is part of the Department of Labor's continuing effort to reduce paperwork and respondent burden in accordance with the requirements of the Paperwork Reduction Act of 1995. This proposal provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information to ensure that requested data can be provided in the desired format, reporting burden is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. MSHA indicates it is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This proposal concerns the Petition for Modification rules as follows:

§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.

Comment - Section 44.9 requires the mine operator to post any petitions for modification filed for the mine on the mine bulletin board and maintain the posting until a ruling on the petition becomes final. This is required where there is no representative of the miners on whom to serve a copy of the petition. If a mine operator files a petition for modification they ask permission to provide an alternate means of providing the same level of safety as the standard. When petitions are filed at Union Mines, a copy of the petition for modification is served on the miners'

representative so they can investigate with MSHA and comment on the mine operator's proposal. At mines where there is no miner's representative, the standard requires that the petition be posted on the mine bulletin board so the miner's working at that operation will have a chance to review changes being proposed to their mine. This information is necessary for the proper performance of the functions of the agency, has practical utility and should not be filed through electronic means. The miners working at operations where no miners' representative is available generally do not have access to computers to accept service by electronic means. The mine bulletin board is the location where all miners go to update themselves on plans, petitions, etc. that affect their mine. Since the mine bulletin board serves as information central at these mines, the practice of posting the petition for modification should continue. To permit electronic filing would deprive most miners from knowledge of what is going on at their mine. Therefore, the UMWA recommends that the practice of posting the petition on the mine bulletin board where there is no representative of the miners must continue.

§44.10 Filing of petition; service.

A petition for modification of the application of a mandatory safety standard under section 101© 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 Blvd., 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 the miners upon the mine operator. Service shall be accomplished personally or by registered or certified mail, return receipt requested.

Comment - This section of the regulations requires that the mine operator serve a copy of the petition to the representative of the miners by person, registered or certified mail. If the petition is filed by the representative of the miners, it likewise must be served to the mine operator. The proposed collection of information is necessary for the proper performance of the agency and does have practical utility. It is necessary for the filing party to serve the other so they are properly informed of the standard being modified and the alternative method of achieving the same level of safety proposed. Further the petition for modification must be filed with the Director of the Office of Standards, Regulations and Variances of the Mine Safety and Health Administration. This is the basic information required to file a petition with service to all parties. There is no means by which this procedure could be streamlined or changed. The filing party could submit this information by electronic submission, however, many coal miners do not have computers or use such technology. Consequently, it would not be feasible to permit the petition for modification to be

submitted by technological collection techniques or electronic submissions. The UMWA recommends that this standard remain unchanged.

§ 44.11 Contents of petition.

- (a) A petition for modification filed pursuant to §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.

Comment - This standard requires the basic information that must be filed in a petition for modification such as names, address, standard to be modified and the method of providing the same level of protection as the standard. This information is the basic information that must be provided to MSHA to consider the modification request. Therefore, this information is necessary for the proper performance of the functions of the agency and does have practical utility. Since this is the basic information needed to file a petition for modification, there is nothing that could be added to "enhance the quality, utility, and clarity of the information to be collected. " Further the filing of a petition for modification could not be made less burdensome by technological collections techniques such as electronic submission. Not all coal miners have computers. Therefore, to permit electronic submissions would not work as a means to notify the representative of the miners when a petition for modification is filed. The UMWA recommends that the standard remain unchanged.