

**SUPPORTING STATEMENT FOR FINAL RULES UNDER THE
SECURITIES ACT OF 1933,
SECURITIES EXCHANGE ACT OF 1934,
DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

A. JUSTIFICATION

**1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION
NECESSARY**

In Release No. 33-9286,¹ the Securities and Exchange Commission (the “Commission”) adopted amendments to certain rule and form requirements to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“the Dodd-Frank Act”), which requires disclosure of specified mine safety and health violations, orders and citations and related matters.

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the affected collections of information are:

“Regulation S-K” (OMB Control No. 3235-0071);²

“Form 10-K” (OMB Control No. 3235-0063);

“Form 10-Q” (OMB Control No. 3235-0070);

“Form 8-K” (OMB Control No. 3235-0060);

“Form 20-F” (OMB Control No. 3235-0288); and

“Form 40-F” (OMB Control No. 3235-0381).

¹ Mine Safety Disclosure, Release No. 33-9286 (December 21, 2011) [76 FR 81762] (“Adopting Release”).

² The paperwork burden from Regulation S-K is imposed through the forms that are subject to the disclosures in Regulation S-K and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience, we estimate the burden imposed by Regulation S-K to be a total of one hour.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the collections of information is to implement the disclosure requirements of Section 1503 of the Dodd-Frank Act. Specifically, the amendments require a public company that is an operator, or has a subsidiary that is an operator, of a coal or other mine, to provide disclosure in its periodic reports filed with the Commission of the following:

- The total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977³ (the “Mine Act”) for which the operator received a citation from the Mine Safety and Health Administration (“MSHA”).
- The total number of orders issued under section 104(b) of the Mine Act.
- The total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health and safety standards under section 104(d) of the Mine Act.
- The total number of flagrant violations under section 110(b)(2) of the Mine Act.
- The total number of imminent danger orders issued under section 107(a) of the Mine Act.
- The total dollar value of proposed assessments from MSHA under the Mine Act.
- The total number of mining related fatalities.
- A list of mines for which the issuer or a subsidiary received written notice from MSHA of a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of the Mine Act.
- A list of mines for which the issuer or a subsidiary received written notice from MSHA of the potential to have such a pattern of violations of mandatory health or safety standards.
- Any pending legal action before the Federal Mine Safety and Health Commission involving such coal or other mine.

In addition, the amendments add a new item to Form 8-K to implement the requirement of Section 1503 of the Dodd-Frank Act, which requires companies to file a Form 8-K reporting the receipt of:

- An imminent danger order under section 107(a) of the Mine Act;
- Written notice from MSHA of a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and

³ 30 U.S.C. 801 et seq.

- substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of the Mine Act; or
- Written notice from MSHA of the potential to have a pattern of such violations.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

All of the above forms are filed electronically with the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system.

4. DUPLICATION OF INFORMATION

We are not aware of any rules that conflict with or substantially duplicate the final rules. However, one disclosure requirement set forth in Section 1503 calls for disclosure of mining-related fatalities, and therefore overlaps to some extent with a disclosure requirement under the rules of MSHA. MSHA requires companies to report to MSHA immediately any death of any individual at a mine,⁴ which MSHA makes available to the public through its data retrieval system on its website, www.msha.gov. Section 1503(a)(1)(G) of the Dodd-Frank Act and the final rules require companies to disclose in their periodic reports any mining-related fatalities that occur during the time period covered by such report. MSHA's disclosure requirement applies to all mine operators under MSHA's jurisdiction, while the disclosure requirement of Section 1503(a)(1)(G) of the Dodd-Frank Act and the final rules require reporting by a subset of that group, specifically, issuers that are required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act and that are operators (or have a subsidiary that is an operator) of a coal or other mine. While there is some overlap, the disclosure requirement of Section 1503 is in effect by operation of the statute, and the final rules simply incorporate the Dodd-Frank Act requirements into the Commission's rules and forms. The Commission believes its rules must incorporate this provision in order to be consistent with the Dodd-Frank Act.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The disclosure requirement set forth in Section 1503 of the Dodd-Frank Act applies, regardless of whether the Commission adopts rules to implement such requirement, to all companies, including small entities, that are required to file reports with the Commission pursuant to sections 13(a) or 15(d) of the Exchange Act, and that operate, or have a subsidiary that operates, a coal or other mine (as defined in Section 1503 of the Dodd-Frank Act). The amendments implement the disclosure requirements set forth in Section 1503. The disclosure requirements do not vary based on the size of the issuer.

Companies receive the citations, orders and notices directly from MSHA and the information can also be accessed via MSHA's data retrieval system. Information about pending legal actions is known to issuers, and certain information about citations and orders

⁴ 30 CFR 50.10.

that are in contest is also available via MSHA's data retrieval system. Mine operators are required by MSHA regulations to report all fatalities to MSHA immediately, and information about mining-related fatalities is also made public via MSHA's data retrieval system. Therefore, we believe most of the information called for by Section 1503 of the Dodd-Frank Act and the amendments is readily available to companies. Further, because the disclosure requirements set forth in Section 1503 are already in effect, we assume that companies have already developed the necessary controls and procedures to review and prepare the information required by Section 1503 for filing with the Commission. For these reasons, the amendments should not have a significant economic impact on small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The regulations and forms set forth the disclosure requirements for periodic and current reports filed by companies to help investors make informed investment and voting decisions. Less frequent collection would deprive investors of access to information that is important to their voting and investment decisions.

7. SPECIAL CIRCUMSTANCES

None.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a release soliciting comment on the new "collection of information" requirements and associated paperwork burdens. The Commission received one comment relating to the burden and cost estimates in our Paperwork Reduction Act analysis.⁵ In response to the solicitation for comment in the proposing release, registrants, investors and other market participants provided comments on the proposing release.

In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission considered all comments received prior to publishing the final rule as required by 1320.11(f). See the comments received at: <http://www.sec.gov/comments/s7-41-10/s74110.shtml>.

After consideration of the comment received, the Commission has increased the hours and costs from the proposal, although not by the magnitude suggested by the commentator, taking into account several substantive modifications we have made to the proposed amendments. The final rules are in some respects less burdensome than the proposals. The Commission simplified the reporting of information with respect to proposed assessments of penalties and pending legal actions, and did not adopt the proposed additional disclosure item. The Commission also changed the time period requirement for periodic reporting from

⁵ See letter from Ben Mathews, Company Secretary, Rio Tinto plc, United Kingdom (Mar. 1, 2011).

the proposal in a manner that lessens the burdens for issuers by requiring information only for the time period covered by the report.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

Not applicable.

12. AND 13. ESTIMATES OF HOUR AND COST BURDENS

The Commission expects that the disclosure amendments will increase the burdens and costs for companies that are subject to the amendments. Section 1503 of the Dodd-Frank Act has already increased the burdens and costs for issuers by requiring disclosure of specified mine safety and health issues in periodic and current reports. The final rules incorporate the Dodd-Frank Act requirements into the Commission's rules and forms.

We estimate the annual incremental paperwork burden for all companies to prepare the disclosure required under the final rules to be approximately 5,775 hours of company personnel time and a cost of approximately \$1,090,000 for the services of outside professionals. These estimates include the time and the cost of implementing disclosure controls and procedures, preparing and reviewing disclosure, filing documents and retaining records.

Our annual burden estimates are based on our understanding that the information required to be disclosed is readily available to issuers, and that therefore the burden imposed by the disclosure requirements is mainly in formatting the information in order to comply with our disclosure requirements and ensuring that appropriate disclosure controls and procedures are in place to facilitate reporting of the information. For each reporting company that we anticipate will be affected by the final rules, we estimate that the amendments will impose on average the following incremental burden hours:

- 20 hours for the amendments to Form 10-K;
- 40 hours for the proposed amendments to Form 20-F;
- 40 hours for the proposed amendments to Form 40-F;

- 15 hours for the proposed amendments to Form 10-Q; and
- 2 hours for the proposed amendments to Form 8-K.

1. Form 10-K

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we estimate that, of the 14,296 Form 10-Ks filed annually, approximately 100 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore will be affected by the rule and form amendments. For purposes of the PRA, we assume that each such filer will have disclosures about mine safety violations to include in its Form 10-K, and that preparation of the Form 10-K disclosure will involve gathering the information for the fourth quarter of the fiscal year, consolidating it with information reported in prior quarters of the fiscal year, and formatting the information for inclusion in the annual report.

2. Form 20-F

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we currently estimate that of the 942 Form 20-F annual reports filed annually by foreign private issuers, approximately 15 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore will be affected by the rule and form amendments. For purposes of the PRA, we assume that each such filer will have disclosures about mine safety violations to include in its Form 20-F.

3. Form 40-F

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we estimate that, of the 205 Form 40-F annual reports filed annually by foreign private issuers, approximately 15 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore will be affected by the rule and form amendments. For purposes of the PRA, we assume that each such filer will have disclosures about mine safety violations to include in its Form 40-F.

4. Form 10-Q

Based on a review of companies filing under certain SICs, as well as a review of companies that are currently providing disclosure of mine safety violations in Commission filings in accordance with Section 1503 of the Act, we estimate that, of the 32,462 Form 10-Qs filed annually, approximately 300 are filed by companies that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore will be affected by the rule and form amendments. We estimate that approximately 100 companies with a Form 10-Q filing obligation will be affected by the final rule and form amendments, and each

such company would file three quarterly reports on Form 10-Q per year. For purposes of the PRA, we assume that each such filer will have disclosures about mine safety violations to include in its Form 10-Q.

5. Form 8-K

Only companies that are not foreign private issuers, and are operators, or have subsidiaries that are operators, of coal or other mines (as defined in the Mine Act and subject to the Mine Act) are required to comply with the new Form 8-K requirement. For purposes of the PRA, we estimate that there will be approximately 100 Form 8-K filers under new Item 1.04, which is based on our estimate of the number of Form 10-K filers that operate, or have a subsidiary that operates, a mine subject to the Mine Act, and that therefore would be affected by the rule and form amendments. In addition, we understand that the triggering events for Form 8-K filing set forth in Section 1503(b)(2) – the receipt of written notice from MSHA that the coal or other mine has a pattern of violations or the potential to have such a pattern – are relatively rare, while the triggering event set forth in Section 1503(b)(1) – the receipt of an imminent danger order – is more common.⁶ For purposes of this calculation, we assume that each potential filer under proposed Item 1.04 of Form 8-K would file four Forms 8-K per year under new Item 1.04 and we estimate that the amendments to Form 8-K will add 2 burden hours to the total burden hours required to produce each Form 8-K.

The table below illustrates the total annual compliance burden of the collection of information in hours and in cost under the amendments for annual reports; quarterly reports and current reports, and Regulation S-K.⁷ The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review the disclosure requirements. For the Exchange Act reports on Forms 10-K, 10-Q and 8-K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. For Forms 20-F and 40-F, we estimate that 25% of the burden of preparation is carried by the issuer internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. There is no change to the estimated burden of the collections of information under Regulation S-K because the burdens that this regulation imposes are reflected in our revised estimated for the forms. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the

⁶ See U.S. Department of Labor, Office of Inspector General, *In 32 Years MSHA Has Never Successfully Exercised Its Pattern of Violations Authority*, Report Number 05-10-005-06-001 (Sept. 29, 2010). According to data available on MSHA's website, 549, 630 and 562 imminent danger orders under Section 107(a) were issued during fiscal 2011, 2010 and 2009, respectively. See Violations Data Set (as of Dec. 9, 2011), available at <http://www.msha.gov/OpenGovernmentData/OGIMSHA.asp> (on file with the Division of Corporation Finance). Note that this number includes all imminent danger orders issued to all companies subject to MSHA's jurisdiction, not only to reporting companies that are subject to the disclosure requirements of Section 1503 of the Act.

⁷ Figures in the tables have been rounded to the nearest whole number.

burden carried by the issuer internally is reflected in hours.

Table 1. Incremental Paperwork Burden under the amendments for annual reports; quarterly reports; and current reports:

	Current Annual Responses (A)	Proposed Annual Responses (B)	Current Burden Hours (C)	Increase/(Decrease) in Burden Hours (D)	Proposed Burden Hours (E) =C+D	Current Professional Costs (F)	Increase/(Decrease) in Professional Costs (G)	Proposed Professional Costs =F+G
Form 10-K	14,296	14,296	21,429,488	1500	21,430,988	\$2,857,265,000	\$200,000	\$2,857,465,000
Form 20-F	942	942	622,871	150	623,021	\$743,047,230	\$180,000	\$743,227,230
Form 40-F	205	205	21,884	150	22,034	\$26,260,500	\$180,000	\$26,440,500
Form 10-Q	32,462	32,462	4,559,793	3,375	4,563,168	\$607,972,400	\$450,000	\$608,422,400
Form 8-K	117,987	118,387	507,065	600	507,665	\$67,608,700	\$80,000	\$67,688,700
Total				5,775			\$1,090,000	

14. COSTS TO FEDERAL GOVERNMENT

We estimate that the costs to the federal government will be approximately \$25,000.

15. REASON FOR CHANGE IN BURDEN

Tables 2A and 2B below illustrate the changes to the total annual compliance burden of the collection of information in hours and cost per response, respectively. The total estimated burdens were calculated by adding the incremental burdens to the existing burdens. Then, the requested burdens and costs per response were calculated by dividing the requested burden estimates by the number of annual responses.

Table 2A: Calculation of Hours Per Response

Form	Existing Annual Responses	Increase (Decrease) in Annual Responses	Current Burden Hours	Program Change: Increase (Decrease) in Burden Hours	Requested Burden Hours	Requested Burden per Response
	(A)	(B)	(C)	(D)	(E) = (C) + (D)	(F) = (D)/(A+B)
10-K	14,296	—	21,429,488	1,500	21,430,988	1,499.0898
20-F	942	—	622,871	150	623,021	661.3811
40-F	205	—	21,884	150	22,034	107.482
10-Q	32,462	—	4,559,793	3,375	4,563,168	140.569527
8-K	117,987	400	507,065	600	507,665	4.2881819

Table 2B: Calculation of Cost Per Response

Form	Existing Annual Responses	Increase (Decrease) in Annual Responses	Current Cost Burden	Program Change: Increase (Decrease) in Cost Burden	Requested Cost Burden	Proposed Cost per Response
	(A)		(B)	(C)	(D) = (B) + (C)	(E) = (D)/(A)
10-K	14,296	—	\$2,857,265,000	\$200,000	\$2,857,465,000	\$199,878.63738
20-F	942	—	\$743,047,230	\$180,000	\$743,227,230	\$788,988.5668
40-F	205	—	\$26,260,500	\$180,000	\$26,440,500	\$128,978.048
10-Q	32,462	—	\$607,972,400	\$450,000	\$608,422,400	\$18,742.60365
8-K	117,987	400	\$67,608,700	\$80,000	\$67,688,700	\$571.757879

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. DISPLAY OF OMB APPROVAL DATE

We request authorization to omit the expiration date on the electronic version of this form for design and scheduling reasons. The OMB control number will be displayed.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Not applicable.

B. STATISTICAL METHODS

Not applicable.