

SUPPORTING STATEMENT

Independent Contractor Registration and Identification 30 C.F.R. §§ 45.3 and 45.4

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.

Independent contractors performing services or construction at mines are subject to Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act). Independent contractors may vary in size, the type of work performed, and the time spent working at mine sites. They may be engaged in every type of work from major new mine construction to minor repair. They may do all their work at mines, or they may work at a mine only one time. Independent contractors may also move from mine to mine or may even be present at several mines at once. If the contractor does not have an identification number, it will be assigned one by the MSHA the first time it is cited for a violation of a mandatory standard or the Mine Act or when one is requested.

Title 30 C.F.R. part 45 sets forth information requirements and procedures for independent contractors to obtain a Mine Safety and Health Administration (MSHA) identification number and procedures for service of documents upon independent contractors. The purpose of this rule is to facilitate implementation of MSHA's enforcement policy of holding independent contractors responsible for violations committed by them and their employees.

Title 30 C.F.R. § 45.3 provides that independent contractors may voluntarily obtain a permanent identification number by submitting to MSHA their trade name, business address, telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for service of documents upon the contractor.

Title 30 C.F.R. § 45.4(a) requires that each independent contractor provide the production-operator in writing the trade name, business address, and telephone number; a description and location at the mine where the work is to be performed; MSHA identification number, if any; and the contractor's business address of record.

Title 30 C.F.R. § 45.4(b) requires the mine operator to maintain certain information concerning each independent contractor at the mine (§ 45.4(a)). This information is required to be provided to the mine operator by the independent contractor. MSHA relies on this information for inspection and enforcement purposes and it must be made available by the mine operator to any MSHA inspector upon request.

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 by MSHA during inspections to determine proper responsibility for compliance with safety and health standards and to facilitate proper service of documents. This information is reviewed by MSHA inspectors semi-annually at surface mines, and quarterly at underground mines.

MSHA uses the information to issue a permanent MSHA identification number to the independent contractor. This number allows MSHA to keep track of a contractor's violation history so that appropriate civil penalties can be assessed for violations of the Mine Act or its accompanying mandatory health and safety standards.

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, in order to comply with the Government Paperwork Elimination Act contractors may apply for ID numbers using the optional electronic form 7000-52 form found on MSHA's Website, <http://www.msha.gov/forms/elawsforms/7000-52.htm>. Completing the electronic form is the same burden as completing the traditional paper filing.

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.

Records pertain to specific independent contractors performing work at individual mines; there is neither similar nor duplicate information available.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

MSHA's enforcement policies are applied uniformly to production operators and independent contractors, regardless of size. Title 30 C.F.R. § 45.3, however, was designed with small businesses in mind by making the application for an identification number voluntary. This information collection does not have a significant economic 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.

30 C.F.R. § 45.4(b) requires the mine operator to maintain certain information about each independent contractor working at the mine. Less frequent recordkeeping would mean that necessary information on some independent contractors performing work at mines would not be available to MSHA inspectors during their inspections. This would not be consistent with the objectives of the Mine Act, i.e., to improve the health and safety of miners.

Independent contractors need only apply one time for an identification number.

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 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 data 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 preclearance Federal Register notice on October 10, 2008 (Vol 73, Number 198, pages 60356-60357), soliciting public comments regarding the extension of this information collection. One comment was received via e-mail from Mr. Rick Birt of Martin Marietta was received. He expressed a concern that the registry served no purpose. MSHA responded with a comprehensive explanation of the purpose of the rule and how it aides the mine operator with contractor management.

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

MSHA does not provide payment 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.

The records are maintained by mine operators and reviewed by MSHA inspectors during routine inspections. There is no personal information requiring confidentiality.

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 13.**

MSHA's records for FY 2007 show that there are approximately 2,028 coal mines and 12,329 metal and nonmetal (MNM) mines for a total of 14,357 mine operators that may use the services of independent contractors.

30 C.F.R. § 45.3

The information required for submittal to MSHA consists of four items: 1) trade name and business address; 2) an address of record for service of documents; 3) telephone number for contact during business hours; and 4) an estimate of the number of hours contractors work on mine property. In addition, the electronic form incorporates information required under 30 C.F.R. 45.4. All of the above are readily available (company letterhead, invoice, etc.) and require little or no research by the contractor. The information is submitted without forms through normal correspondence or via MSHA's Website.

MSHA's records show that there were 2,788 identification numbers issued to independent contractors in 2007. The breakdown is as follows:

	<u>Coal</u>	<u>Metal and Nonmetal</u>
Contractors filing by mail	491	748
Assigned by MSHA as a result of violations issued by compliance specialists	164	260

On-line filing	<u>252</u>	<u>873</u>
Total	907	1,881

MSHA estimates that it takes approximately 8 minutes (0.13 hour) for each contractor to complete the application for either mail or on-line filing to MSHA to obtain an identification number. It is estimated that it takes approximately 4 minutes (0.067 hour) to obtain the information from each contractor for an identification number to be assigned as a result of a citation being issued by a MSHA inspector. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

METAL AND NONMETAL:

$$\begin{aligned}
 &1,621 \text{ mail and on line filings} \times 0.13 \text{ hours} = 211 \text{ burden hours} \\
 &260 \text{ filings resulting from violations} \times 0.067 \text{ hours} = 17 \text{ burden hours} \\
 &\qquad\qquad\qquad \text{Total Burden Hours Metal and Nonmetal} = 228
 \end{aligned}$$

COAL

$$\begin{aligned}
 &743 \text{ mail and on line filings} \times 0.13 \text{ hours} = 97 \text{ burden hours} \\
 &164 \text{ filings resulting from violations} \times 0.067 \text{ hours} = 11 \text{ burden hours} \\
 &\qquad\qquad\qquad \text{Total Burden Hours Coal} = 108
 \end{aligned}$$

$$\text{Total Burden Hours} = 336$$

The estimated burden cost to contractors for providing the contractor identification information is:

METAL AND NONMETAL:

$$228 \text{ burden hours} \times \$24.29 = \$5,538$$

COAL

$$108 \text{ burden hours} \times \$25.78 = \$2,784$$

$$\text{Total Burden Hour Cost} = \$8,322$$

30 C.F.R. § 45.4(a)

MSHA estimates that it will take an employee of the contractor about 5 minutes (0.0833 hour) to comply with this standard and provide the required information to the mine operator. These employees earn typical miner's wages of \$26.39 per hour (2004 wages) at coal mines and \$25.61 per hour at MNM mines.

Annual Hours:

$$\begin{aligned}
 &2,028 \text{ coal mines} \times 6.5 \text{ contractors} \times 0.0833 = 1,098 \text{ hours} \\
 &12,329 \text{ MNM mines} \times 6.5 \text{ contractors} \times 0.0833 = 6,676 \text{ hours}
 \end{aligned}$$

$$\text{Total Burden Hours} = 7,774$$

Annual Burden Cost :

$$\begin{aligned}
 &1,098 \text{ hours} \times \$30.27 \text{ (coal miner salary)} = \$33,236 \\
 &6,676 \text{ hours} \times \$25.61 \text{ (MNM miner salary)} = \$170,972
 \end{aligned}$$

$$\text{Total Burden Hour Cost} = \$204,208$$

30 C.F.R. 45.4(b)

January 2009

MSHA estimates that each mine operator will maintain information on an average of 6.5 contractors each year. MSHA inspection personnel estimate that it takes approximately 8 minutes (0.1333 hour) for a clerical employee of the mine operator earning \$25.78 (2007 wage rates) per hour at coal mines and \$24.29 per hour at MNM mines to maintain the required information.

Annual Hour Burden:

2,028 coal mines x 6.5 contractors x 0.1333 = 1,757 hours

12,329 MNM mines x 6.5 contractors x 0.1333 = 10,682 hours

Total Burden Hours = 12,439

Annual Cost of Hour Burden:

1,757 hours x \$25.78 (coal clerical salary) = \$ 45,295

10,682 hours x \$24.29 (MNM clerical salary) = \$259,466

Total Burden Hour Cost = \$304,761

Above figures are based upon a salary for a coal clerical person of \$25.78 per hour and \$24.29 for a metal and nonmetal mine clerical person (from the 2007 U.S. Metal & Industrial Mineral Mine Salaries, Wages, & Benefits and the 2007 Survey Results and U.S. Coal Mine Salaries, Wages, & Benefits).

TOTAL BURDEN HOURS 20,549

TOTAL BURDEN HOUR COSTS \$ 517,291

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 any hour burden shown in Items 12 and 14.)

! 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.

Postage costs for those contractors who choose to mail their information to MSHA are estimated as follows:

1,239 (491 + 748) written requests for identification number x \$0.42 postage per request = \$520

There are no postage costs associated with on-line filing or identification numbers being assigned as a result of citations being issued by MSHA inspectors.

TOTAL BURDEN COST

\$ 520

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.

No Federal inspection costs have been associated specifically for this information collection. The review/inspection of independent contractors working on mine property is just one aspect of an annual inspection. Under Section 103(a) of the Mine Act, complete inspections are required four times a year for underground mines and twice a year for surface operations.

However, if during an inspection a contractor is cited for a violation of safety or health regulations, or the Mine Act, the contractor must obtain an identification number. The cost to the Government to actually assign an identification number is estimated to be negligible.

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

Respondents: There has been a decrease in respondents of 250 (from 17,395 to 17,145). This is due to a decrease in the number of MNM using independent contractors.

Responses: There has been a decrease in responses of 4,556 (from 100,665 to 96,109). There was a considerable decrease in the number of IDs issued due to the decrease in respondents.

Hours: There has been an increase of 7,153 hours (13,396 to 20,549). The increase is due largely to correctly reporting burden hours under Item #12 that were previously reported under Item #13.

Costs: There has been a decrease of \$183,480 (from \$ 184,000 to \$ 520). This decrease is due to the burden under 30 C.F.R. 45(b) having been previously reported as a burden cost under Item #13, but which should have been reported as burden hours under Item #12 and a slight decrease in the number of MNM mines.

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 is not seeking approval to not display the expiration date for OMB approval of this information collection.

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

There are no certification exceptions identified with this information collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

1. 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 conducted previously, include the actual response rate achieved during the last collection.
2. Describe the procedures for the collection of information including:
 - Statistical methodology for stratification and sample selection,
 - Estimation procedure,
 - Degree of accuracy needed for the purpose described in the justification,
 - Unusual problems requiring specialized sampling procedures, and
 - Any use of periodic (less frequently than annual) data collection cycles to reduce burden.
3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.
4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of tests may be submitted for approval separately or in combination with the main collection of information.
5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

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

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

An Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Federal Mine Safety and Health Act of 1977".

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 103.(h) In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health, Education, and Welfare may reasonably require from time to time to enable him to perform his functions under this Act. The Secretary or the Secretary of Health, Education, and Welfare is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this Act, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.