

SUPPORTING STATEMENT
Independent Contractor Registration and Identification

OMB

<u>Control</u>	<u>Provision</u>	<u>Title</u>
1219-0040	30 CFR § 45.3 (a)	Identification of independent contractors.
	30 CFR § 45.4(a) and (b)	Independent contractor register.

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 (contractors) perform services or construction at a mine. They may be engaged in virtually any type of work performed at a mine, including activities such as clearing land, excavating ore, processing minerals, maintaining or repairing equipment, or constructing new buildings or new facilities, such as shafts, hoists, conveyors, or kilns.

Independent contractors vary in size, the type of work performed, and the time spent working at mine sites. Some contractors work only at mines, others may work one time at a mine and never return to MSHA jurisdiction. Contractors may also move from mine to mine or may be present at several mines at once.

The work performed can pose serious dangers to contractors' employees. From January 1, 2001 through June 30, 2011, 623 workers were fatally injured in mining accidents; 143 of those (or nearly 23%) were employed by independent contractors.

According to Section 3(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) an independent contractor is a mine operator: "*operator* means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine...."

Section 103(h) of the Mine Act states:

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.

Title 30 CFR part 45, *Independent Contractors*, 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 information collections associated with OMB Control Number 1219-0040 support the appropriate assessment of fines for violations by independent contractors and the deterrent effect of MSHA enforcement actions on independent contractors.

Section 45.3, *Identification of independent contractor*, 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.

MSHA assigns an identification number (IN) to an independent contractor if the contractor requests one, or if not requested, the Agency issues an IN the first time the contractor is cited for a violation of either a mandatory standard or the Mine Act.

Section 45.4, *Independent contractor register* has two provisions for collecting information:

(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.

(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.

MSHA uses the information from these records to determine the appropriate responsibility for compliance with safety and health standards and to be able to serve documents to the appropriate entity, the independent contractor or the production-operator. The information collected is reviewed by MSHA inspectors during mandatory inspections which are required four times a year at underground mines and twice a year at surface operations.

MSHA uses the information to issue a permanent MSHA identification number to a contractor. This number allows MSHA to keep track of a contractor's violation history so civil penalties can be assessed for violations of the Mine Act and 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.

contractors who wish to apply for ID numbers must use the electronic form 7000-52 found on MSHA's Website, <http://www.msha.gov/forms/elawsforms/7000-52.htm> . This form may be completed on the website and submitted electronically or the form can be printed, filled out and mailed in. Completing the form electronically is the same burden as completing a printed copy and mailing it in.

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. Section 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.

Section 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 CFR 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 *Federal Register* notice on March 23, 2012 (77 FR 17098). MSHA received one comment on this information collection update supporting the continued collection of information. The commenter advocated updating the regulation to enhance MSHA's ability to monitor the number of contractors working on mine property, when they are there, and what type of work they are doing, in order to reduce the number of injuries and fatalities in this group of workers.

The *Federal Register* notice of March 23, 2012 addressed only the information collections associated with these regulatory provisions. The comment advocating updating of these regulations is beyond the scope of this information collection notice.

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.

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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.**

NOTE: Burden hour costs were calculated using the following hourly wage rates from *U.S. Coal Mines Salaries, Wages, and Benefits – 2010 Survey Results*, compiled by Krista Noyes Salzer, InfoMine USA, Inc., 2010. These are composite rates that combine wage rates for both underground and surface mines for coal and M/NM mines:

Coal Supervisor:	\$78.35
M/NM Supervisor:	\$63.06
Coal Secretary:	\$26.44
M/NM Secretary:	\$26.28
Coal Miner:	\$34.26
M/NM Miner:	\$27.00

2011 # of mines updated to Qtr 4 of FY-2011 (Total Respondents):

Coal Surface	1,320
Coal Underground	556
MNM Surface	11,135
MNM Underground	<u>234</u>
	13,245

30 CFR § 45.3

The information for voluntary 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 CFR. 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 2,364 identification numbers issued to independent contractors in 2010, as follows:

	Coal	Metal- Nonmetal	Totals
Contractors filing by mail	491	748	1,239
Contractors filing on-line	252	873	1,125
Total, new contractors	743	1,621	2,364

MSHA estimates that it takes approximately 8 minutes (0.13 hour) for a contractor to complete the application for either mail or on-line filing to MSHA to obtain an identification number.

Annual burden hours

COAL:

$$743 \text{ mail and on line filings} \times 0.13 \text{ hours} = 97 \text{ hours}$$

METAL AND NONMETAL:

$$1,621 \text{ mail and on-line filings} \times 0.13 \text{ hours} = 211 \text{ hours}$$

$$\text{Total Burden Hours} = 308 \text{ hours}$$

Annual hour burden costs

COAL:

$$97 \text{ hours} \times \$26.44 = \$2,565$$

METAL AND NONMETAL:

$$211 \text{ burden hours} \times \$26.28 = \$5,545$$

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Total Burden Hour Cost = \$ 8,110

30 CFR. § 45.4(a)

MSHA estimates that there are approximately 6.5 contractors operating per mine. MSHA also 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 \$34.26 per hour (2010 wages) at coal mines and \$27.00 per hour at MNM mines.

Annual burden hours:

1,876 coal mines x 6.5 contractors x 0.0833	=	1,016 hours
11,369 MNM mines x 6.5 contractors x 0.0833	=	<u>6,156 hours</u>
Total Burden Hours	=	7,172 hours

Annual hour burden cost :

1,016 hours x \$34.26 (coal miner salary)	=	\$ 34,808
6,156 hours x \$27.00 (MNM miner salary)	=	\$166,212
Total Burden Hour Cost	=	\$201,020

30 C.F.R. 45.4(b)

MSHA estimates that it takes a clerical employee, earning \$26.44 per hour at coal mines and \$26.28 at M/NM mines, 8 minutes (0.1333 hours) to maintain the required information.

Annual Hour Burden:

1,876 coal mines x 0.1333	=	250 hours
11,369 MNM mines x 0.1333	=	1,515 hours
Total Burden Hours	=	1,765

Annual hour burden cost:

250 hours x \$26.44 (coal clerical salary)	=	\$ 6,610
1,515 hours x \$26.28 (MNM clerical salary)	=	\$39,814
Total Burden Hour Cost	=	\$46,424

TOTAL BURDEN HOURS = 9,245

TOTAL BURDEN HOUR COSTS = \$255,554

TOTAL RESPONSES = 101,702

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 written requests x \$0.44 postage = \$545

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 \$545

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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 1,536 (from 17,145 to 15,609). This is due to a decrease in the number of coal and M/NM mines and a decrease in the number of contractors requesting an ID.

Responses: There has been an increase in responses of 5,539 (from 96,109 to 101,702). While, there was a decrease in the number of IDs issued due to the decrease in respondents, MSHA has separately counted responses under § 45.4, in order to present a more accurate reflection of the information collection activity.

Hours: There has been a decrease of 11,304 hours (20,549 to 9,245). The decrease is due largely to the correction of a calculation error in § 45.4(b) from the previous update. Previously MSHA had calculated that each record received by the mine operator would take 8 minutes to maintain instead of a total of 8 minutes to maintain all records received under §45.4(b).

Costs: There has been an increase of \$25 (from \$ 520 to \$ 545). This increase is due to a slight increase in the cost of postage.

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.

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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 is not seeking approval to 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 Submission," of OMB 83-I.

There are no certification exceptions identified with this information collection.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.

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

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

* * *

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine;

* * *

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.

* * *

30 CFR Part 45--INDEPENDENT CONTRACTORS

§ 45.3 Identification of independent contractors.

(a) Any independent contractor may obtain a permanent MSHA identification number. To obtain an identification number, an independent contractor shall submit to the District Manager in writing the following information:

- (1) The trade name and business address of the independent contractor;
- (2) An address of record for service of documents;
- (3) A telephone number at which the independent contractor can be contacted during regular business hours; and
- (4) The estimated annual hours worked on mine property by the independent contractor in the previous calendar year, or in the instance of a business operating less than one full calendar year, prorated to an annual basis.

§ 45.4 Independent contractor register.

(a) Each independent contractor shall provide the production-operator in writing the following information:

- (1) The independent contractor's trade name, business address and business telephone number;
- (2) A description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed;
- (3) The independent contractor's MSHA identification number, if any; and
- (4) The independent contractor's address of record for service of citations, or other documents involving the independent contractor.

(b) Each production-operator shall maintain in writing at the mine the information required by paragraph (a) of this section for each independent contractor at the mine. The production-operator shall make this information available to any authorized representative of the Secretary upon request.

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