

United Mine Workers of America



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May 18, 2012

2012 MAY 21 P 3:00

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 1219-0040

Dear Mr. Moxness:

Attached are the comments of the United Mine Workers of America on the above-named Proposed Extension of Existing Information Collection; Independent Contractor Registration and Identification. 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,

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

**Comments of the United Mine Workers of America
On the Proposed Extension of Existing Information Collection;
Independent Contractor Registration and Identification
May 22, 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;

UMWA COMMENT: The UMWA believes that this information is a necessary valuable tool for the Agency as well as miners. Based on the information to be gathered, the Agency would be able to identify if the independent contractors are compliant with the law, safe, cooperative, utilizes training, and one that places the priority of safety above production.

- 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;

UMWA COMMENT: The UMWA has no way to determine if the Agencies Estimated Total Burden of hours and that the Estimated Total Burden Cost is accurate so we cannot comment. In saying that it is safe to say that the trade off of any cost associated with this is way less than the cost of a loss of human life.

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

UMWA COMMENT: Qualitative research most commonly involves the systematic collection, ordering, description and interpretation of textual data generated from talk, observation or documentation. Rather than just relying on submitted written comments and submitted data, observing and communicating directly with miners in the field will give the Agency a wealth of information that would be valuable in this process.

- Address 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, to minimize the burden of the collection of information on those who are to respond.

UMWA COMMENT: The Union agrees that electronic submissions could be provided to take advantage of technology but other means must also be provided. Some miners and operators lack access to computers and computer skills so mail with hard copies will still be necessary.

UMWA ADDITIONAL COMMENTS

The fatal rate among independent contractors working at mining operations is seriously disproportionate to the number of miners killed in mining accidents. As MSHA points out, mining deaths among independent contractors accounted for 23% of the accidents occurring in the mining industry between January 1, 2001 and June 30, 2011. The high incidence of death among these workers is likely attributable to their inexperience and lack of adequate training associated with the dangers inherent in the mining industry. Because there is such a high death rate with independent contractors it is critical that information regarding these operators is provided to MSHA. MSHA uses the contractor information during their inspections to determine their history for compliance. These contractors perform various types of work at mines, including sinking shafts, slopes and building new plants, conveyors and maintaining or repairing equipment, and even operating equipment underground to name a few.

Many times these contractors are unaware of the dangers mining operations present. In one such incident at the Blacksville No. 1 Mine in 1992, contract workers unknowingly ignited methane causing an explosion while working on a capped intake shaft, killing four people. The workers were installing a 16-inch dewatering casing through an opening in the cap covering the production shaft. This casing, which would be needed in the future for dewatering, was designed to extend the entire 800-foot length of the production shaft. The fact that the airshaft was capped restricted airflow, allowing an explosive methane-air mixture to accumulate beneath the cap. The methane-air mixture was ignited by hot slag produced by arc welding conducted on top of the cap. The resulting explosion killed four workers and seriously injured two others. The contract workers inexperience working around coal mines, methane, and failure to test for methane contributed to this accident. Therefore, it is crucial that some identification and registration system be in place to identify who these workers are, whether they have had proper training in areas where the work is to be performed, and are certified to perform such work, etc. These filing requirements are a basic safeguard for the mine operator as well as the contractor and must not be eliminated. This does not burden the industry to submit these records and are to safeguard those working for these companies. In addition, contractors who are inexperienced and are not properly trained often work in close proximity to other miners working in the areas. This poses a danger to them.

Often these accidents occur because contract workers are not familiar with the hazards of mining or the mine in which they are contracted to work as the miners who face these dangers every day of their life working at this operation. By using contract workers, coal companies are able to avoid the liability of any accident or violations associated with their workforce. Further

they use these "contract miners" for the purpose of evaluating their skill level and work ethic. If they pass the test, they have the possibility of full-time employment with the coal company. The contract workers often feel they have to work a little faster, cut a few corners, save the company some money to prove themselves worthy of a full-time job, often with devastating consequences. This is another reason why their fatal rate is disproportionate to the number of miners killed in mining accidents.

When one examines the existing code under 30CFR Part 45 - Independent Contractors it becomes clear that the current standards are sorely inadequate. These rules do not require the independent contractor to obtain a permanent MSHA identification number and their registration information only has to be maintained by the coal company for whom they are working. Consequently, MSHA has no means to track how many of these contractors are working at mine sites or for how long unless they happen upon them during their inspection of the mine. So setting aside the goal to reduce paperwork and respondent burden in accordance with the requirements of the Paperwork Reduction Act of 1995, it is obvious this is not a good idea. The current reporting requirement is sorely inadequate, therefore no consideration should be given to reducing these records. If anything they should be improved upon to make sure MSHA has the ability to track how many of these contractors are on mine property, the work they are performing, and for how long.

Title 30 CFR §45.3 provides as follows:

§ 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.

The word may does not require the independent contractor to have an MSHA identification number at all if they do not want to. This seriously hinders MSHA's ability to monitor how many contractors are working on mine property, when they are there or what type of work they are doing.

Due to the lack of contractor requirements under current regulations, coal companies boastfully claim they are not responsible for any contractor on mine property. When the mine Act was written, Congress declared that;

- (a) The first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource--the miner;**
- (b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families;**
- (c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;**
- (d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated;**
- (e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;**
- (f) the disruption of production and the loss of income to operators and miners as a result of coal or other mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and**
- (g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education, and Welfare and the Secretary of Labor to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners; (2) to require that each operator of a coal or other mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal or other mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal or other mining industry, research and development and training programs aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry.**

This cannot be achieved with a hear no evil, see no evil approach taken today by the coal companies and with MSHA's blessing. If there is concern at all over the number of fatalities occurring with contract workers, we need to start with a rule change to require this information to be filed with MSHA including future work that has been planned so the Agency can monitor contractors more closely, not doing away with filing requirements.