

## SUPPORTING STATEMENT

Qualification/Certification Program and Man Hoist Operators Physical Fitness: 30 CFR 75.100, 75.155, 75.159, 75.160, 75.161, 77.100, 77.105, 77.106, 77.107, and 77.107-1

### 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.**

Section 101(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires that the Secretary must develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. Under section 103(a), authorized representatives of the Secretary of Labor or Secretary of Health and Human Services must make frequent inspections and investigations in coal or other mines each year for the purpose of gathering information with respect to mandatory health or safety standards.

Under 30 CFR 75.159 and 77.106 require coal mine operators to maintain a list of persons who are certified and those who are qualified to perform duties under Parts 75 and 77, such as conduct examinations for hazardous conditions, conduct tests for methane and oxygen deficiency, conduct tests of air flow, perform electrical work, repair energized surface high-voltage lines, and perform duties of hoisting engineer. The recorded information is necessary to ensure that only persons who are properly trained and have the required number of years of experience are permitted to perform these duties. MSHA does not specify a format for the recordkeeping; however, it normally consists of the names of the certified and qualified persons listed in two columns on a sheet of paper. One column is for certified persons and the other is for qualified persons.

Sections 75.100 and 77.100 pertain to the certification of certain persons to perform specific examinations and tests. Sections 75.155 and 77.105 outline the requirements necessary to be qualified as a hoisting engineer or hoist man. Also, under §§ 75.160, 75.161, 77.107 and 77.107-1, the mine operator must have an approved training plan developed to train and retrain the qualified and certified persons to effectively do their tasks.

These regulations recognize State certification and qualification programs. However, where State programs are not available, MSHA may certify and qualify persons.

Under this program MSHA will continue to qualify or certify individuals as long as these individuals meet the requirements for certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor.

Applications for Secretarial qualification or certification are submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. MSHA Form 5000-41 provides the coal mining industry with a standardized reporting format that expedites the certification and qualification process while ensuring compliance with the regulations. MSHA uses the form's information to determine if applicants satisfy the requirements to obtain the certification or qualification sought. Persons must meet certain minimum experience requirements depending on the type of certification or qualification.

**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 the mine operator and MSHA enforcement personnel to determine whether certified and qualified persons, who are properly trained, are conducting tests or examinations, and operating hoisting equipment.

Form 5000-41 allows mining operators to report to MSHA the names of persons who have satisfactorily completed required mine foreman and hoisting training. MSHA uses the information to issue certification/qualification cards to those persons who are certified/qualified.

The mine operator also uses the form as an application to certify miners to perform specific required examinations and test, or to qualify miners as hoisting engineers or hoist men, in States without certification programs. The Qualification and Certification Unit then mails the applicant a certificate. This certification satisfies the law where State certification programs are not available.

**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.**

MSHA Form 5000-41 may be submitted on-line, by fax, or by mail. In FY 2009, MSHA received a total of 778 Forms (5000-41). MSHA received 305 paper forms and 473 electronic forms.

Under 30 CFR 75.159 and 77.106, no improved information technology has been identified that would reduce the burden. The mine operator, however, may retain the records in whatever method he or she chooses, which may include using computer technology.

**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.**

No duplication of the information exists. Records are unique to each mine Section 101(a)(9) of the Mine Act forbids the Agency to reduce the protection given miners by any existing regulation.

**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.**

This information does not have a significant 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.**

If these collections are not conducted, miners may be exposed to safety hazards such as explosion, fire, and electrical shock. The list of qualified or certified individuals ensures that only those qualified or certified to perform duties which require specialized expertise at underground and surface coal mines, i.e., conduct examinations for hazardous conditions, conduct tests for methane and oxygen deficiency, conduct tests of air flow, perform electrical work, repair energized surface high-voltage lines, and perform duties of hoisting engineer. The regulations do not specify how frequently the lists are to be updated; mine operators, however, normally update them each quarter. Less-frequent information collection may result in a shortage of persons qualified and certified to perform important safety and health functions at mines. This would not be consistent with the purposes of the Mine Act. Without the lists, MSHA would not be able to effectively enforce the requirements of the Mine Act.

MSHA Form 5000-41 is an application form for miners in states without a certification/qualification program as well as the form that notifies MSHA that specific individuals have specific training. Without this form, MSHA would be unable to certify or qualify any miner for specified jobs in states without certification/qualification programs or as hoisting engineers or hoist men.

The burdens on mine operators in states without certification/qualification programs could be significant because they would not be able to operate their mines safely or effectively, or maybe not at all, under the Mine Act.

**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 secrets, 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 date 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.**

In accordance with 5 CFR 1320.8 (d), MSHA will publish the proposed information collection requirements in the Federal Register, notifying the public that these information collection requirements are being reviewed in accordance with the Paperwork Reduction Act of 1995, and giving interested persons 60 days to submit comments.

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

MSHA does not provide payments 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.**

There is no assurance of confidentiality provided to respondents for certification or qualification other than nondisclosure of personal privacy information. This would include the applicant's name and address. A nine digit MSHA Individual identification Number (MIIN) will

be assigned by MSHA for the purpose of identification. MSHA requires the miner's address to mail the miner his or her certification or qualification card. Instructions as to the expected content, format, and required training are included with the form.

To the extent that records are kept by the agency, they are covered by a Privacy Act notice published in the Federal Register. Manual records are stored in locked files and are accessible only to authorized personnel during working hours.

Form 5000-41 is a Privacy Act record. Files are posted with the appropriate Privacy Act warning. During working hours, only authorized personnel have access to the files.

**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.**

### Training Plans

There are approximately 1,123 surface and 424 underground coal mines, a total of 1,547 mines. Each operator is required to maintain a list of certified and qualified persons who are required to perform duties under parts 75 and 77. Each coal mine operator normally updates the list each quarter. The estimated time per response to update the list of certified and qualified persons is 5 minutes (0.083 of an hour). MSHA estimates that a mine supervisor will update the certified/qualified person lists at an hourly rate of \$84.70. [Hourly wage rates obtained from information received by U.S. Coal Mine Salary, Wages, Benefits Survey Results]

Responses

1,547 coal mines x 4 updates/year = 6,188 responses

Burden Hours

1, 547 coal mines x 4 updates/year x 0.083 hour = 514 hours

Costs

514 hrs to update lists x \$84.70/hr = \$ 43,536

MSHA Form 5000-41

MSHA received 778 forms (5000-41) covering 1,776 miners during fiscal year 2009.

The information collected on the Form 5000-41 is readily available to the mine operator from employee records. Additionally, on average, each 5000-41 will include only about two (2) miners seeking certification (1,776 miners divided by 778 forms). MSHA personnel are estimating that it will take approximately 10 minutes (.1666 hours) to complete the electronic version of Form 5000-41 and 17 minutes (.283 hours) to complete and mail the hard copy version of Form 5000-41. Of the 778 forms submitted, 473 forms were submitted electronically and 305 were mailed. The burden estimated by MSHA is based on MSHA's knowledge of the mining industry and MSHA's frequent interaction with the mining industry. MSHA employees who have previously worked for the mining industry have substantiated this estimation. Accordingly, the hour burden is calculated as follows:

Responses

778 forms = 778 responses

Burden Hours

305 forms(hard copy) x .283 hrs. = 86 hours

473 forms(electronic)x .1666 hrs. = 79 hours

Total Hours = 165 hours

Costs

**165 hrs. x \$84.70 = \$13,976**

**Total Responses**

6,188 + 778 = 6,966 responses

**Total Burden Hours**

**514 + 165 = 679 hours**

**Total Cost**

**\$43,536 + \$13,976 = \$57,512**

**13. Provide an estimate for 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 collections 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.**

The cost of mailing the forms to MSHA is \$0.41 each.  
Accordingly, the annual postage cost is estimated as follows:

Burden Cost

305 forms x \$0.41 per form = \$125

**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.**

MSHA enforcement personnel examine the records during routine inspections; therefore, no cost is incurred by enforcement personnel.

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

The decrease in burden hours (from 15,355 to 679) and the decrease in cost (from \$1,002,718 to \$57,512) is due to a decrease in the number of respondents (from 1,721 to 1,547) and the elimination of the burden hours and cost for the training plan which was a one time cost.

**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.**

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 will display the expiration date on the OMB approved form.

**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 exceptions to the certification statement.

## **B. Collection of Information Employment Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods 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 frequent 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.**

This collection of information does not employ statistical methods and statistical analysis is not required by the regulation, therefore, questions 1 through 5 do not apply.