

SUPPORTING STATEMENT

Pattern of Violations

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.

The Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, places the ultimate responsibility on mine operators for ensuring the safety and health of miners. The legislative history of the Mine Act emphasizes that Congress reserved the pattern of violations (POV) provision for mine operators with a record of repeated significant and substantial (S&S) violations. The provision was to be used in situations where other enforcement provisions of the statute had been ineffective at bringing the mine into compliance with safety and health standards.

This proposed rule would revise the existing rule to simplify the existing POV criteria, improve consistency in applying the POV criteria, and more adequately achieve the statutory intent. It would also encourage chronic violators to comply with the Mine Act and MSHA's safety and health standards. This proposed rule would contain a provision subject to review and approval by OMB under the Paperwork Reduction Act of 1995 (PRA). This information collection package for the proposed rule is being submitted to OMB for review under 44 U.S.C. § 3504, paragraph (h) of the PRA, as amended (44 U.S.C. 3501 *et seq.*).

The existing rule includes mitigating circumstances under the initial screening criteria for issuing a potential pattern of violations (PPOV) notice as § 104.2(b)(4). The existing rule does not define mitigating circumstances, but explains its intent in policy. The proposed rule would eliminate the PPOV notice and incorporate the initial screening criteria into the pattern criteria for placing a mine in a POV status. The preamble to the proposed rule discusses the types of situations and conditions that MSHA would consider as mitigating circumstances in determining whether to issue a POV notice. The proposed rule states that MSHA would consider an operator's effective implementation of an MSHA-approved safety and health management program as a mitigating circumstance. MSHA expects that most operators, who compare their compliance record with the POV criteria on MSHA's website and determine that they are approaching a POV level, would work with MSHA to bring their mines into compliance to avoid being issued a POV notice, which could result in the temporary closure of the mine. These operators would submit a written safety and health management program to the District Manager for approval.

The proposed rule is designed to encourage operators to take proactive measures to bring their mines into compliance. MSHA believes that an operator who implements a written safety and health management program would be demonstrating a significant commitment to complying with MSHA's standards and regulations, and restoring safe and healthful conditions for miners.

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 respondents for the paperwork provisions of this information collection would be mine operators.

Mine operators, miners, and state and federal mine inspectors would use the written safety and health management programs to monitor the progress and effectiveness of the operators' efforts to restore the mine to a safe and healthful condition. This program would encourage operators to take proactive measures to find and fix the root causes of violations before they become a hazard to miners. Unlike the existing rule, the proposal would signal to operators that the mere abatement of violations as they are cited is insufficient.

Under the existing rule, mine operators, miners, and state and federal mine inspectors monitor the progress and effectiveness of the operator's actions to reduce S&S violations

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.

The proposed rule would not specify how the written program is to be kept or how it is to be submitted to MSHA. The program could be kept in the traditional manner (print/hard copy) and submitted through the mail or stored and submitted electronically. MSHA encourages mine operators to store records electronically to allow for frequent retrieval and updating. No information technology has been identified that would further reduce the paperwork burden.

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.

MSHA knows of no other Federal or State requirements that would duplicate those contained in the proposed rule.

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.

The information collection provisions of the proposed rule would apply to all operations, both large and small. Congress intended that the Secretary enforce the law at all mining operations within its jurisdiction regardless of size and that information collection and recordkeeping requirements be consistent with efficient and effective enforcement of the Mine Act. [See Rep. No. 181, 95th Cong., 1st Sess. 28 (1977)]. Section 103(e) of the Mine Act directs the Secretary of Labor not to impose an unreasonable burden on small businesses when obtaining any information under the Act. Accordingly, MSHA has taken this into consideration when developing the proposed regulation.

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.

Because mining conditions are constantly changing, miners could be exposed to hazards or violations of health and safety standards that develop as mining progresses. MSHA believes that the requirements for written programs are necessary to ensure that operators manage safety and health conditions in their mines to protect miners. Reduction in these requirements may result in unsafe conditions developing or remaining undetected and uncorrected, thus jeopardizing the safety and health of miners.

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 will publish the notice soliciting comments on the information collection requirements in the preamble of the proposed rule published in the *Federal Register*, which will notify the public that this information collection requirement is being reviewed in accordance with the Paperwork Reduction Act of 1995, and give interested persons 60 days to submit comments. MSHA will address comments on the information collection requirements in the preamble to the final rule and, if necessary, submit a revised information collection request.

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

MSHA provides no payments or gifts to the respondents identified in this collection.

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.

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 14.**

Approved Safety and Health Management Programs as a Mitigating Circumstance under § 104.2(a)(8)

MSHA estimates that under the proposed rule about 50 mines each year would develop and implement approved safety and health management programs. This would impose information collection requirements related to mitigating circumstances under proposed § 104.2(a)(8). MSHA expects that developing an approved program with meaningful and measurable benchmarks would take about 160 hours of a supervisor's time at an hourly wage of \$84.70 and 240 hours of miners' time at an hourly wage of \$35.30.

The burden of developing and implementing an approved safety and health management program is 400 hours per mine (160 + 240) and the average cost is approximately \$22,000 (160 x \$84.70 + 240 x \$35.30).

Total Annual Burden Hours: 50 mines x 400 hours per mine = **20,000 hours**

Total Annual Burden Hour Costs: 50 mines x \$22,000 per mine = **\$1,100,000**

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.

Costs for copying and mailing the program and revisions are estimated to be \$100 per program.

Total Annual Cost Burden: 50 mines x \$100 per mine = **\$5,000.**

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.

Annual Cost to the Federal Government for Review and Approval of Operator Safety and Health Management Programs

MSHA estimates that a safety and health specialist would take an average of 16 hours initially plus 8 hours after the operator revises the program in response to MSHA comments to review a safety and health management program for the District Manager. A clerical person would spend a total of 2 hours preparing the specialist's comments, making copies, and sending the comments then the approved program back to the mine operator. The burden hours would be 26 hours per program. MSHA estimates that, on average, a health and safety specialist earns \$58 per hour (\$46 wage rate plus \$12 in benefits) and a clerical person earns \$23 per hour (\$18 wage rate plus \$5 in benefits). The burden hour cost would be (24 hr x \$58/hr) + (2 hr x \$23/hr) = \$1,438 per program.

Total Annual Burden Hours: 50 programs x 26 hr/program = **1,300 hours**

Total Annual Burden Hour Costs: 50 programs x \$1,438/program = **\$71,900**

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

The proposed rule would simplify existing requirements.

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 is not seeking approval to display or 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. 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 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.**

This collection of information does not employ statistical methods.

ATTACHMENT 1: RELEVANT STATUTORY PROVISIONS

**Federal Mine Safety & Health Act of 1977, Public Law 91-173, as amended by
Public Law 95-164 and Public Law 109-236**

**30 U.S.C. 814(e)
SEC. 104.**

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(e)(1) If an operator has a pattern of violations of mandatory health or safety standards in the coal or other mine which 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, he shall be given written notice that such pattern exists. If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard. The withdrawal order shall remain in effect until an authorized representative of the Secretary determines that such violation has been abated.

(3) If, upon an inspection of the entire coal or other mine, an authorized representative of the Secretary finds no violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine health and safety hazard, the pattern of violations that resulted in the issuance of a notice under paragraph (1) shall be deemed to be terminated and the provisions of paragraphs (1) and (2) shall no longer apply. However, if as a result of subsequent violations, the operator reestablishes a pattern of violations, paragraphs (1) and (2) shall again be applicable to such operator.

(4) The Secretary shall make such rules as he deems necessary to establish criteria for determining when a pattern of violations of mandatory health or safety standards exists.

ATTACHMENT 2: RELEVANT REGULATORY PROVISIONS

Code of Federal Regulations; Title 30—Mineral Resources; Chapter I—Mine Safety and Health Administration; U.S. Department of Labor

PART 104—PATTERN OF VIOLATIONS

Proposed Rule

§ 104.2 Pattern criteria.

(a) Specific pattern criteria will be posted on MSHA’s website at www.msha.gov and used in the review to identify mines with a pattern of S&S violations. The review will include:

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(8) Mitigating circumstances.

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Preamble to the Proposed Rule

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Under proposed § 104.2(a)(8), like existing § 104.2(b)(4), MSHA would consider mitigating circumstances. Under this proposed provision, MSHA would consider the causes of repeated violations that may be beyond the operator’s control, such as changes in mine ownership or mine management, and whether conditions at the mine show a trend of significant improvement.

Under this proposed provision and consistent with the legislative history, MSHA would allow operators to take proactive measures to bring their mines into compliance. For example, operators who compare their compliance record with the POV criteria and determine that they are approaching a pattern of violations level may work with MSHA to bring their mines into compliance to avoid a POV notice. Under the proposal, an operator may submit a written safety and health management program to the District Manager for approval. To obtain approval, operators should structure safety and health management programs so that MSHA can determine whether the program’s parameters would result in meaningful, measurable, and significant reductions in S&S violations. The operator should develop a process and program with measurable benchmarks for abating specific violations that could lead to a POV and addressing these hazardous conditions at their mines. Using these benchmarks, operators would be able to use the MSHA database accessible through the Agency’s website to monitor their safety and health record. Under the proposal, MSHA would consider an operator’s effective implementation of an MSHA-approved safety and health management program as a mitigating circumstance.

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