

## SUPPORTING STATEMENT

### Pattern of Violations

**OMB Control Number: 1219 -NEW**

### General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 or the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

### Specific Instructions

#### 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 who demonstrated a disregard for the safety and health of miners through a recurring pattern of significant and substantial (S&S) violations. MSHA was to use the POV provision in situations where other enforcement provisions of the statute had been ineffective at bringing the mine into compliance with safety and health standards.

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

Specifically, new Final Rule 30 CFR 104.2(a)(8) provides that MSHA will consider mitigating circumstances in determining whether to issue a POV Notice. Among the items MSHA could consider is an approved corrective action program to reduce S&S violations accompanied by positive results.

The Department notes the posting requirement in new Final Rule § 104.3(b) is not an information collection for purposes of the Paperwork Reduction Act, as the agency has provided the information for purposes of disclosure to the public. See 5 CFR 1320.3(c)(2).

The existing rule included mitigating circumstances as § 104.2(b)(4) under the initial screening criteria for issuing a potential pattern of violations (PPOV) notice. The existing rule does not define mitigating circumstances, but MSHA explains its intent in policy. The final rule eliminates the PPOV notice and incorporates the initial screening criteria into the pattern criteria for placing a mine in a POV status. The preamble to the final rule discusses the types of situations and conditions that MSHA will consider as mitigating circumstances in determining whether to issue a POV notice. During the hearings on the proposed rule, MSHA clarified that it will consider an operator's effective implementation of an MSHA-approved corrective action program as a mitigating circumstance. Other mitigating circumstances could be MSHA's verification that the mine is abandoned or that there has been a legitimate change in mine ownership. MSHA expects that most mine 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 or sections of the mine. MSHA expects that these operators will submit a written corrective action program to the District Manager for approval.

The final rule is designed to encourage operators to take proactive measures to bring their mines into compliance. MSHA believes that an operator who implements a corrective action program is demonstrating a 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 are mine operators. Mine operators, miners, and state and federal mine inspectors use the written corrective action programs to monitor the progress and effectiveness of the operators' efforts to restore the mine to a safe and healthful condition. This program encourages 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 final rule signals to operators that the mere abatement of violations as they are cited is insufficient.

**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 final rule does not specify how the written program is to be kept or how it is to be submitted to MSHA. Operators can keep the program in the traditional manner (print/hard copy) and submit it through the mail, or store and submit it 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.**

The corrective action program addresses specific conditions at an individual mine over a limited period of time. No other duplicative information exists.

**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 final rule 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. MSHA took the burden on small mines into consideration when developing the final rule.

**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 development of a corrective action program is necessary to ensure that operators maintain safety and health conditions in their mines to protect miners. Reduction in these requirements may result in unsafe conditions developing or remaining 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 published a proposed rule on February 2, 2011, soliciting comments on the information collection requirements and gave interested persons 60 days to submit comments. MSHA received no comments specifically citing the paperwork for

developing a corrective action program, getting MSHA approval, or implementing it. Commenters expressed confusion as to the extent of the content of the program. In response to commenters' concerns, MSHA referenced the Agency's guidelines for corrective action programs on its website and its commitment to helping operators.

MSHA has guidelines for corrective action programs on the Agency's website at <http://www.msha.gov/POV/POVsinglesource.asp> under [Pattern of Violations \(POV\) Procedures Summary – 2010](#), Appendix B - Guidelines for Corrective Action Programs. In general, programs must contain concrete, meaningful measures that can reasonably be expected to reduce the number of S&S violations at the mine; the measures should be specifically tailored to the compliance problems at the mine; and the measures should contain achievable benchmarks and milestones for implementation. \* \* \* \* \* If requested, MSHA will assist mine operators in developing an appropriate corrective action program.

**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.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

MSHA provides no assurance of confidentiality 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.**

§ 104.2(a)(8) – Approved Corrective Action Programs as a Mitigating Circumstance

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The Department believes that mine operators would disclose most mitigating circumstances (e.g., a change in mine ownership or notice that a mine is inactive) to MSHA as a routine business practice or under the Agency’s regulation in 30 CFR part 41 – Notification of Legal Identity. Were a POV notice imminent, the rule imposes no unique burden under the PRA. See 5 CFR 1320.3(b)(2). However, development of a corrective action plan does impose burden under the PRA.

MSHA estimates that under the final rule approximately 275 mines will develop and implement MSHA-approved corrective action programs in the first year. MSHA believes this number will decrease by 10% in each subsequent year. The average number of mines over 3 years is 249 [(275+248+223)/3]. This will impose information collection requirements related to mitigating circumstances under final § 104.2(a)(8).

MSHA expects that developing such a program with meaningful and measurable benchmarks will take about 128 hours of a supervisor’s time and 8 hours of miners’ time. Costs for copying and mailing the program and revisions are estimated to be \$100 per program.

The burden of developing and implementing an approved corrective action program is 136 hours per mine (128 + 8) plus an additional cost of \$100 per mine for supplies and postage.

Burden Hours:

- 249 mines x 128 supervisor hours per mine = 31,872 hrs
- 249 mines x 8 miner hours per mine = 1,992 hrs

**Total Burden Hours = 33,864 hrs**

Burden Hour Costs:

- 31,872 hrs x \$84.69/hr = \$2,699,240
- 1,992 hrs x \$36.92/hr = \$ 73,545

**Total Burden Cost = \$2,772,785**

**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 supplies and postage for mailing the program and revisions are estimated to be \$100 per program. While MSHA is encouraging electronic submission, it is not required. For purposes of this calculation it is assumed that all operators submitting a corrective action program will submit the program by mail.

Total Annual Cost Burden:

• 249 mines x \$100 per mine	=	\$24,900
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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.**

Annual Cost to the Federal Government for Review and Approval of Operators'  
Corrective Action 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 corrective action 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, and then the approved program, back to the mine operator. The burden hours would be 26 hours per program. MSHA estimates that the average health and safety specialist earns \$56.42 per hour at the GS-12 pay level and the average clerical person earns \$42.18 per hour at the GS-9 pay level. The Wage rates shown above come from Office of Personnel Management (OPM) 2010 data and the hourly wage includes benefits.

Total Annual Burden Hours:

• 249 programs x 24 hr/program	=	5,976 hours
• 249 programs x 2 hr/program	=	<u>498 hours</u>
<b>Total Burden Hours</b>	=	<b>6,474 hours</b>

Total Annual Burden Hour Costs:

• 5,976 hours x \$56.42	=	\$337,166
• 498 hours x \$42.18	=	\$21,006
<b>Total Burden Hour Cost</b>	=	<b>\$358,172</b>

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

The final rule simplifies the existing POV criteria, improves consistency in applying the POV criteria, and more effectively achieves the statutory intent. It also encourages chronic violators to comply with the Mine Act and MSHA's safety and health standards.

In mid-2007, MSHA centralized its POV screening. Since that time, MSHA has updated and revised its potential pattern of violations (PPOV) screening criteria and procedures; developed a web tool to help mine operators determine their compliance performance compared to these criteria; and issued its first PPOV notices.

Under the final rule, MSHA projects that more mine operators will develop and submit corrective action programs to MSHA for approval as a mitigating circumstance, based on their monitoring of their compliance performance. MSHA believes that mine operators will improve their compliance, and the need for corrective action programs will gradually decrease by about 10 percent each following year.

**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 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**

This collection of information does not employ statistical methods.

