

SUPPORTING STATEMENT

Information Collection Title: Pattern of Violations

OMB Control Number: 1219 -0150

Collection Instrument(s): None

CFR Citation: 30 CFR 104.2(a)(8)

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 the question "Does this ICR contain surveys, censuses or employ statistical methods" 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.

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to 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 and metal and nonmetal mines.

The Mine Act 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) criteria for mine operators that demonstrate disregard for the safety and health of miners through a recurring pattern of significant and substantial (S&S) violations. MSHA uses the POV provisions in 30

CFR part 104 in situations where other enforcement provisions have been ineffective at bringing the mine operator into compliance with safety and health standards.

This information collection encourages mine operators that exhibit a pattern of violating MSHA's safety and health standards to comply with such standards.

Section 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 (CAP) to reduce S&S violations, accompanied by positive results.

MSHA notes the posting requirement in section 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).

MSHA expects that most mine operators that 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 CAP to the District Manager for approval.

This collection is designed to encourage operators to take proactive measures to bring their mines into compliance. MSHA believes that an operator that implements a CAP is demonstrating a commitment to complying with MSHA's safety and health standards and to restoring safe and healthful working 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 CAPs to monitor the progress and effectiveness of the operators' efforts to restore their mines 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. The collection signals to operators that the mere abatement of violations as they are cited is insufficient to ensuring safe and healthful working conditions for miners.

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 collection does not specify how the written CAP is to be kept or how it is to be submitted to MSHA. Operators can keep the CAP 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 CAP 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, describe any methods used to minimize burden.

The information collection provisions 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 not to impose an unreasonable burden on small businesses when obtaining any information under the Mine Act. MSHA took the burden on small mines into consideration when developing the collection.

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 safety and health standards that develop as mining progresses. MSHA believes that the development of a CAP by a mine operator that is approaching a POV is necessary to ensure that the operator maintain safety and health conditions in its mine(s) 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 60-day Federal Register notice on May 3, 2019 (84 FR 19121). MSHA received no public comments.

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.**
- **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 under Item 13.**

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

MSHA estimates 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 is imminent, it imposes no unique burden under the PRA. See 5 CFR 1320.3(b)(2). However, development of a CAP does impose burden under the PRA.

Since the rule took effect on January 23, 2013, operators have submitted and MSHA has approved 44 CAPs. Since 2016, the number of CAPs has declined from 8 in 2016, to 7 in 2017 to 4 in 2018, a decline of 50%.

MSHA expects that developing a CAP with meaningful and measurable benchmarks will take about 128 hours of a supervisor's time, at a composite wage rate for both surface and underground coal and metal and nonmetal (M/NM) mines of \$55.23¹ per hour; and 8 hours of a miners' time at a composite wage rate for both surface and underground coal and M/NM mines of \$34.64^{2,3} per hour.

Burden Hours:

- 44 CAPs x 128 supervisor hours per CAP = 5,632 hours
- 44 CAPs x 8 miner hours per CAP = 352 hours

Total Burden Hours = 5,984 hours

Burden Hour Costs:

- 5,632 hours x \$55.23 per hour = \$311,055
- 352 hours x \$34.64 per hour = \$ 12,193

Total Burden Cost = \$323,249

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

- **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**

¹For all wage rates, MSHA uses the relevant precision throughout the calculation to avoid compound rounding errors and rounds at the final rate value. Displayed intermediate calculation values are presented to explain the calculation and are representative but the final rate value reflects the correct rounding and final estimate. For coal and metal nonmetal mines, the supervisory wage is the employment weighted average of the rates for 8 supervisor and manager Standard Occupational Classification (SOC). Occupational Codes from the BLS May 2017 OES data (<http://www.bls.gov/oes>) for North American Industry Classification System (NAICS) codes 212100 & 212200 & 212300, Coal and Metal Nonmetal Mining. Weighted average rate \$55.23 = \$36.16 x 1.49 x 1.025.

² For coal and metal nonmetal mines, the miner wage is the employment weighted average from the BLS May 2017 OES data for NAICS codes 212100 & 212200 & 212300, Coal and Metal Nonmetal Mining. Weighted average rate \$34.64 = \$22.68. x 1.49 benefit adjustment x 1.025 inflation adjustment.

³ For coal mines, the wages are the employment weighted average of the rates for Mining Occupational Codes from the BLS May 2017 OES data for NAICS codes 212100 & 212200 & 212300, Coal and Metal Nonmetal Mining adjusted for benefits and inflation to obtain a fully loaded rate. The benefit-scaler comes from BLS Employer Costs for Employee Compensation access by menu <http://www.bls.gov/data/>. The data series CMU2030000405000P, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average 2017Qtr4-2018Qtr4 to determine that 32.9 percent of total loaded wages are benefits. MSHA computes the scaling factor with a number of detailed calculations but it may be approximated with the formula and values $1 + (\text{benefit percentage}/(1-\text{benefit percentage})) = 1 + (.329/(1-.329)) = 1.49$. Wage inflation is the change in Series ID: CIS2020000405000I; seasonally adjusted; Series Title: Wages and salaries for Private industry workers in Construction, extraction, farming, fishing, and forestry occupations (wage inflation index = 1.025), Index. (<https://data.bls.gov/cgi-bin/srgate>); Qtr 4 2018/Qtr 4 2017)

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

Total Annual Cost Burden:

- 44 CAPs x \$100 per CAP = \$4,400

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 CAP 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 CAP, back to the mine

operator. The burden hours are 26 hours per CAP. MSHA estimates that the average health and safety specialist earns \$57.10 per hour at the GS-12 pay level and the average clerical person earns \$39.46 per hour at the GS-9 pay level. The Wage rates shown above are from Office of Personnel Management (OPM) March 2018 data cube <http://www.fedscope.opm.gov/> and the annual average salary was multiplied by a benefits scaler of 1.39 to include benefits. The hourly wage rate was derived by dividing the adjusted annual average salary by 2087.

Total Annual Burden Hours:

• 44 CAPs x 24 hour per CAP	=	1,056 hours
• 44 CAPs programs x 2 hour per CAP	=	<u>88 hours</u>
Total Burden Hours	=	1,144 hours

Total Annual Burden Hour Costs:

• 1,056 hours x \$57.10 per hour	=	\$60,298
• 88 hours x \$39.46 per hour	=	\$3,473
Total Burden Hour Cost	=	\$63,771

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

Respondents: There has been a decrease of 66 in the number of respondents of respondents (from 100 to 44).

Responses: There has been a decrease of 66 in the number of responses (from 100 to 44).

Burden Hours: There has been a decrease of 7,616 burden hours (from 13,600 to 5,984). This is due to a high MSHA estimate compared to what MSHA currently experiences and can be attributed in part to improved compliance as a result of actions taken by the Agency, such as targeted inspections.

Cost: There has been a decrease in annual cost of \$5,600 (from \$10,000 to \$4,400). This is due to a high MSHA estimate compared to what MSHA currently experiences and can be attributed in part to improved compliance as a result of actions taken the Agency such as targeted inspections.

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 associates no forms with this information collection.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no certification exceptions identified with this information collection.

B. Collection of Information Employing Statistical Methods

This collection of information does not use statistical methods.