

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)

This Information Collection Request (ICR) seeks to extend, without change, a currently approved information collection.

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.

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The Mine Act places on mine operators the ultimate responsibility for ensuring the safety and health of miners. MSHA uses the Pattern of Violation (POV) provisions in 30 CFR part 104 to identify mine operators who have demonstrated a recurring pattern of significant and substantial (S&S) violations of mandatory health and safety standards at their mines. An S&S violation is one that is regarded reasonably likely to result in a serious injury or illness.

Under section 104.2, at least once each year MSHA reviews the compliance and other records of mines to determine whether any mines meet the POV criteria. In determining whether to issue a POV notice, MSHA considers mitigating circumstances facing mine operators, in accordance with section 104.2(a)(8). Specifically, among the items MSHA could consider is any approved corrective action program (CAP) that the mine is implementing to reduce S&S violations, together with any improved results.

MSHA expects that most mine operators that determine their mines are approaching a POV level, would work with the Agency to avoid being issued a POV notice, given that such a notice could result in the temporary closure of the mine or sections of the mine. MSHA expects that operators in this situation will submit a written CAP to the District Manager for approval.

This information collection is designed to encourage operators to take proactive measures to bring their mines into compliance. MSHA believes that operators who implement CAPs are thereby demonstrating a commitment to complying with MSHA's safety and health standards and to restoring safe and healthful working conditions for miners.

[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).]

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 safe and healthful working conditions in their mines. This program encourages operators to take proactive measures to find and fix the root causes of violations before miners are exposed to the hazards. The collection signals to operators that reactive abatement of violations after 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 change constantly, 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 with a compliance rate approaching the POV threshold is necessary to ensure that the operator maintain safe and healthful working conditions in its mine(s). Any 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.

In accordance with 5 CFR 1320.8(d), MSHA publishes the proposed information collection requirements in the *Federal Register*, notifying the public that these information

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collection requirements are being reviewed in accordance with the Paperwork Reduction Act of 1995, and giving interested persons 60 days to submit comments.

On March 22, 2022, MSHA published in the *Federal Register* a request for public comments on its proposal to extend information collection for Patter of Violations in accordance with the Paperwork Reduction Act of 1995 (87 FR 16239).

In response to the request for public comment, MSHA received one comment from the Industrial Minerals Association of North America (IMA-NA), an industry association representing mining companies that extract and process industrial minerals. After careful review of the comment, MSHA has decided not to make any change to this Pattern of Violations information collection, OMB Control No. 1219–0150. Below, the comment is summarized and the reasoning for MSHA’s determination is explained.

The commenter cited two specific deficiencies in MSHA’s processes for issuing a pattern of violations notice. First, potentially erroneous citation information can remain in the Mine Data Retrieval System (MDRS), a public-facing information system available at MSHA’s website. The commenter stated that mine operators are allowed to request an informal conference within 10 days of the issuance of a citation, and this process anticipates the opportunity for mine operators to present additional facts or mitigating circumstances that could lead MSHA to vacate the or reduce its severity. However, the commenter states that MSHA has no legal obligation to grant a conference and is currently not holding such conferences in a timely manner. The commenter stated that during these delays, disputed and potentially erroneous citation information can stay in MSHA’s Mine Data Retrieval System (MDRS) and can potentially mislead the public.

Second, disputed citations can remain in the MDRS. The commenter stated that mine operators are also allowed to formally contest a citation when the penalty is assessed, but that this legal challenge frequently occurs months after the citation is issued and may not receive formal review for almost a year. The commenter stated that during these delays and until the legal challenge is resolved, inaccurate and misleading information can remain on the MDRS. The commenter stated that pending resolution, disputed matters should not be included in pattern of violations analyses.

The commenter provided two suggestions for improving the quality, utility and clarity of the information collected for pattern of violations analyses: (1) implement a system under which penalties will not be assessed for any citation for which an informal conference has been requested but not yet held (or has been denied, as is MSHA’s right); and (2) implement a system where any citation that is subject to formal contest will not be included in pattern of violations analyses.

After careful consideration, MSHA has determined that the IMA-NA comment is not specific to this information collection, which is intended to implement section 104.2(a)(8), and that the comment’s recommendations are outside the scope of the proposed information collection extension. This information collection concerns the documents mine operators may submit to MSHA to explain mitigating circumstances related to the

S&S violations found at their mines, when MSHA considers whether to issue a pattern of violation notice. Whether or how to post citations or penalties at MSHA's website is beyond the scope of the proposed information collection extension, as is whether or how S&S violations must be included in MSHA's pattern of violation analysis and determination. Therefore, MSHA will make no change to this Pattern of Violations information collection, OMB Control No. 1219-0150.

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.**

All information related to quantities and inspection rates are estimated by MSHA's Headquarters Enforcement Division based on field experience with different types of mining operations, sizes of mines, and the frequency of inspections dictated by statute. Mine operators provide MSHA Headquarters Enforcement Division the number of mines and employment, and from this information MSHA tracks the number of active and inactive mines and mine types throughout the United States.

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. Where 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, 55 CAPs. Since 2019, the number of new CAPs has declined from 7 in 2019, to 1 in 2020 to 2 in 2021. Due to the decline of new CAPs in the last several years, MSHA expects that only 2 new CAPs will be developed each year. Further, as mines close or change ownership, and as earlier developed CAPs' goals and objectives are reached, CAPs become outdated, or follow-up is no longer be required. Thus, the number of active CAPs will be lower than when the program was initiated and followed-up on from 2013 to 2018.

MSHA used data from the May 2020 Occupational Employment and Wage Statistics (OEWS) published by the Bureau of Labor Statistics (BLS) for hourly wage rates¹ and adjusted the rates for benefits² and wage inflation³. MSHA expects that developing a new CAP with meaningful and measurable benchmarks will take about 128 hours of time

¹ Options for obtaining OEWS data are available at item "E3. How to get OEWS data. What are the different ways to obtain OEWS estimates from this website?" at https://www.bls.gov/oes/oes_ques.htm.

² The benefit multiplier comes from BLS Employer Costs for Employee Compensation accessed by menu at <http://www.bls.gov/data/> or directly with <http://download.bls.gov/pub/time.series/cm/cm.data.0.Current>. Insert the data series CMU2030000405000P, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, which is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average 2020Qtr4-2021Qtr3 to determine that 32.8 percent of total loaded wages are benefits. MSHA computes the benefit multiplier with a number of detailed calculations, but it may be approximated with the formula and values $1 + (\text{benefit percentage}/(1-\text{benefit percentage})) = 1 + (.328/(1-.328)) = 1.49$.

³ 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, Index. (<https://data.bls.gov/cgi-bin/srgate>; Qtr 4 2021/Qtr 2 2020=147.3/139.2=1.058).

for a supervisor earning \$59.31 per hour⁴; and 8 hours of time for a miner earning \$41.51 per hour⁵.

MSHA estimates there are 2 existing CAPs a year, each one reviewed quarterly by a supervisor, for a total of 8 responses. MSHA expects that updating an existing CAP with meaningful and measurable progress reports will take about 4 hours of a supervisor's time each quarter. No miner hours will be required during the updating process.

Estimated Annualized Respondent Cost and Hour Burden

		A	B	C (=AxB)	D	E (=Cx D)	F	G (=ExF)
Type of Respondent	Form/Activity/Section	No. of Respondents	No. of Responses per Respondent	Total Responses	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate	Total Annual Respondent Cost
Business or other for-profit	104.2(a)(8) (Supervisor, New CAPs)	2	1	2	128.00	256.00	\$59.31	\$15,183.36
Business or other for-profit	104.2(a)(8) (Supervisor, Existing CAPs)	2	4	8	4.00	32.00	\$59.31	\$1,897.92
Business or other for-profit	104.2(a)(8) (Miner, New CAPs)	2	1	2	8.00	16.00	\$41.51	\$664.16
Total		6		12		304 (rounded)		\$17,745 (rounded)

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.**

⁴ For coal, metal, and nonmetal mines, the supervisor wage is the employment weighted average of the mean hourly wages for 4 first-line supervisor Standard Occupational Classification (SOC). Occupational Codes are from the BLS May 2020 OEWS data (<http://www.bls.gov/oes>) for North American Industry Classification System (NAICS) codes 212100 & 212200 & 212300, Coal, Metal, and Nonmetal Mining. Weighted average rate \$59.31 = \$37.62 x 1.49 benefit adjustment x 1.058 inflation adjustment. All subsequent uses of \$59.31 represent supervisor hours. For 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.

⁵ For coal, metal, and nonmetal mines, the miner wage is the employment weighted average of the mean hourly wages for 11 miner SOCs from the BLS May 2020 OEWS data for NAICS codes 212100 & 212200 & 212300, Coal, Metal, and Nonmetal Mining. Weighted average rate \$41.51 = \$26.33 x 1.49 benefit adjustment x 1.058 inflation adjustment. All subsequent uses of \$41.51 represent miner hours.

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 2 new CAPs + 2 existing CAPs each year and revisions are estimated to be \$200 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:

- 4 CAPs x \$200.00 per CAP (rounded) = \$800**

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 New Operators' Corrective Action Programs

MSHA estimates that a safety and health specialist would take an average of 24 hours (16 hours initially plus 8 hours after the operator revises the CAP in response to

MSHA comments) to review a new 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.

Once a new CAP has been approved, a safety and health specialist would spend 2 hours each calendar quarter (8 hours annually) to review and respond to the mine operator’s progress updates.

MSHA estimates that the average health and safety specialist earns \$63.34 per hour⁶ at the GS-12 pay level and the average clerical person earns \$42.30 per hour⁷ at the GS-9 pay level.

Occupation	CAPS	Hours per CAP	Hours	Wage Rate	Total Cost
Health Specialist, New CAPs	2	24	48.00	\$63.34	\$3,040.32
Health Specialist, Existing CAPs	2	8	16.00	\$63.34	\$1,013.44
Clerical, New CAPs	2	2	4.00	\$42.30	\$169.20
Rounded Totals			116		\$4,223

15. Explain the reasons for any program changes or adjustments.

Respondents: There has been a decrease in the number of respondents (44 to 6). There was an overstatement of the number of CAPs created in previous years,

Responses: There has been a decrease in responses (44 to 12), due to a decrease in number of respondents. In addition, MSHA has corrected its estimate of responses per respondent to account for quarterly responses on existing CAPs.

Burden Hours: There has been a decrease in burden hours (from 5,984 to 304) as a result of decreased respondents. This was a previously high estimate in respondents compared to what MSHA currently experiences. This can be attributed in part to improved compliance as a result of actions taken by the Agency, such as targeted inspections.

⁶ The wage rates shown here come from the Office of Personnel Management (OPM) June 2021 FedScope data cube, <http://www.fedscope.opm.gov/>. Average salary was obtained for the appropriate grade and occupation for DOL-MSHA employees. In order to include the cost of benefits, this annual average salary was multiplied by a benefits scaler of 1.435 computed from MSHA’s 2022 budget submission. The final hourly wage rate was derived by dividing the adjusted annual average salary by 2,087 hours (hourly rate = FedScope Salary x 1.435 ÷ 2,087); \$92,116 x 1.435 ÷ 2,087 = \$63.34.

⁷ The wage rates shown here come from the Office of Personnel Management (OPM) June 2021 FedScope data cube, <http://www.fedscope.opm.gov/>. Average salary was obtained for the appropriate grade and occupation for DOL-MSHA employees. In order to include the cost of benefits, this annual average salary was multiplied by a benefits scaler of 1.435 computed from MSHA’s 2022 budget submission. The final hourly wage rate was derived by dividing the adjusted annual average salary by 2,087 hours (hourly rate = FedScope Salary x 1.435 ÷ 2,087); \$61,514 x 1.435 ÷ 2,087 = \$42.30.

Cost: There has been a decrease in annual cost (from \$4,400 to \$800). 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.