

PUBLIC SUBMISSION

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Docket: MSHA-2022-0014
Information Collection Title: Pattern of Violations

Comment On: MSHA-2022-0014-0001
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pattern of Violations

Document: MSHA-2022-0014-DRAFT-0003
Comment from IMA-NA

Submitter Information

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General Comment

Please see the attached comments from the IMA-NA. If you have any questions, I can be reached at chrisgreissing@ima-na.org or 571-259-9551. Thank you!

Attachments

IMA-NA Comments on RFI Proposed Extension of Information Collection for POV
23 May 2022 FINAL



May 23, 2022

Ms. Aromie Noe
Director
Office of Standards, Regulations, and Variances
Department of Labor
Mine Safety and Health Administration
201 12th Street South
Suite 4E401
Arlington, VA 22202-5452

Re: IMA-NA Comments on OMB Control No. 1219-0150: Proposed Extension of Information Collection; Pattern of Violations – Request for Public Comments

Filed via the Federal eRulemaking Portal: <http://www.regulations.gov>

Dear Ms. Noe:

The Industrial Minerals Association – North America (IMA-NA) is pleased to submit the following comments in response to the Mine Safety and Health Administration’s (MSHA) Request for Public Comments titled Proposed Extension of Information Collection; Pattern of Violations published in the March 22, 2022 Federal Register (87 Fed. Reg. 16239).

IMA-NA is the representative voice of companies that extract and process a vital and beneficial group of raw materials known as industrial minerals. Industrial minerals are the ingredients for many of the products essential to our everyday lives such as glass, ceramics, paper, plastics, paint and coatings, cosmetics, pharmaceuticals, and laundry detergent. IMA-NA’s companies and the people they employ are proud of their industry and the socially responsible methods they use to deliver these beneficial products. Industrial minerals include ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, lithium, mica, potash, high purity quartz, salt, soda ash (trona), sodium bicarbonate, talc, wollastonite, and uintaite.

IMA-NA members are providing comment in response to MSHA’s interest in “Suggest methods to enhance the quality, utility and clarity of the information collected.”

MSHA’s Mine Data Retrieval System (MDRS) provides readily available data regarding citations issued by MSHA inspectors to mines. The data reflect the “paper written” as recorded by an inspector. MSHA’s administrative processes provide mine operators with opportunities to challenge the validity and classification of citations.

Mine operators may request an informal conference within ten (10) days of the issuance of a citation, and this process anticipates the opportunity for operators to present additional facts and/or mitigating circumstances that can result in a citation being vacated or the severity reduced. MSHA is under no legal obligation to grant a conference, and in fact, currently these conferences are not being held in a timely manner. While MSHA attributes these delays to staffing shortages, this does not address the fact that disputed, and potentially erroneous, citations remain in MDRS, providing poor quality information and potentially misleading the public.

Mine operators may also formally contest a citation when the penalty is assessed. This legal challenge, while noted as “In Contest” on the Violations section of MDRS, is not reflected in the Pattern of Violations (POV) section. This legal challenge frequently occurs months after the citation was issued and may not receive formal review for almost a year. The result of these legal challenges is frequently a reduction in the severity of a citation based on additional information presented by the mine operator, and at times, citations are vacated entirely. Until the legal challenge is resolved, inaccurate, misleading information can remain on MDRS.

MSHA has data readily available to demonstrate that citations are in fact frequently vacated, or their severity reduced, in these legal challenges. Thus, inclusion of citations that are being conferenced or contested, is potentially misleading.


The issuance of a POV notice provides additional incentive for chronic violators to comply with the Mine Act and MSHA’s safety and health standards. We recognize that, when determining whether to issue a POV notice, MSHA reviews any mitigating circumstances, in accordance with paragraph 30 CFR 104.2(a)(8). However, IMA-NA members suggest that the quality, utility and clarity of the information used in Pattern of Violations analyses would be enhanced through the following means:

1. Implement a system where penalties are not assessed for any citation for which an informal conference has been requested but not yet held (or denied, as is MSHA’s right)
2. Implement a system where any citation that is subject to formal contest not be included in POV analyses

MSHA inspectors are not infallible, and neither are mine operators. Mechanisms to resolve a dispute of the facts and/or circumstances are available, but we submit that pending resolution, disputed matters should not be included in POV analyses.

Thank you for your consideration of our comments. Should you require additional information or clarification, we would be most happy to accommodate.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Greissing". The signature is fluid and cursive, with the first name "Chris" being larger and more prominent than the last name "Greissing".

Chris Greissing

President

571-259-9551

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