

MSHA News Release: [01/17/2013]

Contact: Jesse Lawder

Phone: (202) 693-4659

Release Number 13-94-NAT

MSHA to publish pattern of violations final rule

ARLINGTON, Va. — Secretary of Labor Hilda L. Solis today announced a final rule to strengthen safety in the nation's most dangerous mines. The rule, which revises the Mine Safety and Health Administration's pattern of violations regulation in 30 Code of Federal Regulations Part 104, has been submitted to the Federal Register for publication. It will ensure that mine operators monitor and address the most hazardous safety problems in their mines. It also strengthens MSHA's hand to respond to dangerous mining conditions, and improve safety and health for mining's most important resource – the miner.

"The tragedy at the Upper Big Branch Mine should not be forgotten. It exacted a terrible toll on the nation, coal miners' families and coal companies. Over the last three years, the Labor Department has undergone a serious and comprehensive evaluation of mine safety practices, and that has led to reforms to protect America's miners. The rule we are announcing today will hold mine operators accountable when they disregard life-saving safety measures," Secretary Solis said.

"This final rule represents one of MSHA's highest priority regulatory initiatives and one that addresses Congress' intent that this regulation encourage chronic violators to comply with the Mine Act and MSHA's health and safety standards," said Joseph A. Main, assistant secretary of labor for mine safety and health. "We think that this final rule will help prevent another tragedy such as occurred at the Upper Big Branch Mine. It promotes consistency in applying the POV notice as an enforcement tool, provides for a more open and transparent process, emphasizes operators' responsibility to comply with safety and health standards and monitor their own compliance, and more effectively achieves the statutory intent of the Mine Act."

Under the Federal Mine Safety and Health Act of 1977, MSHA is required to issue a POV notice to any mine operator that demonstrates a disregard for the health and safety of miners through a pattern of significant and substantial violations. An S&S violation is one that contributes to a safety or health hazard that is reasonably likely to result in a reasonably serious injury or illness.

The POV final rule, which is also responsive to several recommendations made by the Labor Department's Office of the Inspector General in a September 2010 report, strengthens MSHA's ability to deal with the nation's most dangerous, troubling mines and mine operators. It places the agency in a better position to identify operators that demonstrate a disregard for the health and safety of miners and have not responded to other enforcement measures.

"There has been recognition by many that the system has been broken, with no mine being placed on POV status until 2011 – 33 years after the law went into effect," said Main. "MSHA should not be prevented from taking action to protect the lives of miners for months, or even

years, while we await the final outcome of citations and orders that a mine operator can easily contest. The new rule addresses those flaws."

The following are among the final rule's major provisions:

- Allows MSHA to issue a POV notice without first issuing a potential POV notice.
- Eliminates the existing requirement that MSHA can consider only final orders in its POV review.
- Establishes general criteria and procedures that MSHA will use to identify mines with a pattern of S&S violations.
- Reinforces mine operators' responsibility for compliance with MSHA safety and health standards and for monitoring their mines' compliance.
- Clarifies that MSHA will consider a mine operator's effective implementation of an MSHA-approved corrective action program as a mitigating circumstance in its POV review, if the program contains definitive benchmarks implemented prior to POV notice, and the operator has reduced S&S violations.
- Restates the statutory requirement that, for mines in POV status, each S&S violation will result in a withdrawal order until a complete inspection finds no S&S violations.

"The primary purpose of the POV rule is the restoration of safe and healthful conditions at noncompliant mines," said Main. "The final rule better achieves the goal of the Mine Act and the intent of Congress."

In April 2011, MSHA launched an online monitoring tool that enables mine operators, miners and the public to determine, based on the most recent data available, how a specific mine matches up with the criteria for a potential pattern of violations. Under the final rule, the online tool will continue to be available to measure compliance performance against POV criteria.

The POV rule is the third regulation MSHA has issued aimed at preventing coal mine dust explosions, such as the one that occurred at the Upper Big Branch Mine. MSHA issued a final rule to improve rock dust standards on June 21, 2011, and a final rule on underground coal mine examinations April 6, 2012. Both of these rules were aimed at improving conditions that could lead to such explosions.

The rule announced today can be viewed at <http://www.msha.gov>.

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