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## **MSHA issues proposed rule on pattern of violations**

### *Rule would eliminate potential POV notification and use of final orders in review*

**ARLINGTON, Va.** – The U.S. Department of Labor’s Mine Safety and Health Administration today announced that a proposed rule to revise its pattern of violations regulation in 30 Code of Federal Regulations Part 104 will be published in the *Federal Register* on Feb. 2. The proposal, which would revise and simplify the POV criteria and MSHA’s procedures for issuing a POV notice, is available at <http://s.dol.gov/CQ>.

In September 2010, MSHA announced new screening criteria for the POV program, giving the agency an additional enforcement tool to use at mines with a history of violating safety and health standards.

“As I’ve said many times before, the current POV system is broken, and this regulation is the next critical step in reforming the enforcement program under the existing statute,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “It would require mine operators to be much more proactive in monitoring their compliance performance and would eliminate two provisions in the existing regulation: the potential POV procedure and the requirement regarding final orders.

“Congress enacted this law 33 years ago, and not one mine has ever been placed on a POV,” Main added. “This proposed rule is designed to meet Congress’ intent.”

Among the major provisions of the proposed regulation:

- The proposal would specify the general criteria that MSHA would use to identify mines with a pattern of violations. These general criteria would include compliance, accident, injury and illness records.
- MSHA would post the specific POV criteria, along with compliance information, in a searchable (by mine) database, at <http://www.msha.gov>. The agency’s website would allow operators to monitor their own records against the POV criteria and take proactive measures to eliminate persistent, systemic safety and health hazards, and bring their mines into compliance with MSHA safety and health standards and regulations.
- The proposal would eliminate the potential POV procedure, which involves written notification that a potential POV exists at a particular mining operation. No longer would mine operators receive advanced warning. Instead, screening under the proposed rule would be for mine operators that meet criteria for a pattern of violations, and the proposal would increase the frequency of MSHA’s review of a mine for a POV from once to at least twice a year. MSHA believes that the ready availability of compliance data on the agency’s website will eliminate the need to inform operators of a potential POV.

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- As a mitigating circumstance in determining whether operators have a POV, MSHA would consider an operator's prior submission, for the agency's approval, of a written safety and health management program aimed at finding and fixing problems, reducing significant and substantial violations, and improving safety and health conditions for miners. A significant and substantial – or S&S – violation is one that reasonably could be expected to result in a serious injury or illness.
- The proposal would eliminate the existing requirement that only citations and orders which have become final orders can be used in MSHA's POV review. The existing requirement provides an incentive for operators to contest citations and results in final orders years after the violations have occurred.
- For operators placed on a POV, each S&S violation found at a mine would result in a withdrawal order until the violation is abated. Mines would remain in POV status until a complete inspection of the entire mine resulted in no S&S violations.

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