

## PATTERN OF VIOLATIONS (POV) PROCEDURES SUMMARY

At least once each year, in accordance with 30 CFR section 104.2, MSHA will review the violation and injury history of each mine under MSHA's jurisdiction to identify those that are exhibiting a Pattern of Violations (POV). MSHA will document the criteria and data used to conduct the review. Additional mines may be identified after MSHA verifies the accuracy and completeness of injury and employment data.

The Administrators will issue a memorandum to each District Manager who has mines within the district that meet the POV screening criteria with instructions for reviewing the designated mines for mitigating circumstances (see Appendix A - Mitigating Circumstances). Each memorandum will include the criteria and detailed data supporting a POV designation. The District Manager will, by memorandum to the Administrator, report facts relevant to whether there are mitigating circumstances that justify postponing or not issuing a POV notification.

The preamble to section 104 (78 FR 5063) states that one type of mitigating circumstance that could justify a decision to not issue a POV Notice, or to postpone the issuance of a POV Notice to reevaluate conditions in the mine, is an operator's approved and implemented corrective action program, accompanied by positive results in reducing S&S violations (see Appendix B - Corrective Action Programs).

An MSHA POV panel will review the information provided by the District Manager. Within seven calendar days of receipt of the District Manager's memorandum, the panel will review the information, obtain any additional necessary information, and make a recommendation as to whether any of the mines meeting the screening criteria for a Pattern of Violations should be excluded from POV notification or have their POV notification postponed due to mitigating circumstances. The panel will provide a report of its findings to the Administrators, with a copy provided to the Assistant Secretary, Deputy Assistant Secretaries, the Director of Office of Assessments, Accountability, Special Enforcement and Investigations, and the Associate Solicitor for Mine Safety and Health.

The Administrators will determine whether to issue a POV Notice and notify the appropriate District Managers of the mines that meet the criteria and have no mitigating circumstances warranting postponement or non-issuance of a POV Notice. The District Managers will issue the POV Notices (see *CITATION AND ORDER WRITING HANDBOOK FOR COAL MINES AND METAL AND NONMETAL MINES*, page 31). The District Manager will provide a copy of the notification to the representative(s) of miners at the mine, if applicable. The notification will specify the basis for identifying the mine as having a POV, and will be made available to the public on the POV Single Source page of MSHA's website.

The preamble to section 104 (78 FR 5065) states MSHA will provide mine operators an opportunity to meet with the district manager for the limited purpose of discussing

discrepancies (such as, but not limited to, citations that are entered incorrectly or have not yet been updated in MSHA's computer system, Federal Mine Safety and Health Review Commission decisions rendered, but not yet recorded, on contested citations, and citations issued in error to a mine operator instead of an independent contractor at the mine) in the data. A mine operator may request a meeting with the District Manager for the sole purpose of presenting discrepancies in MSHA data. At this meeting, mine operators will have an opportunity to question the underlying data on which the POV is based, and provide documentation to support their position.

Following notification to the operator of the issuance of a Pattern of Violations Notice, the District Manager shall initiate appropriate inspection activities to ensure that the mine is inspected in its entirety within 90 days of the POV Notice. If an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard during an inspection conducted while a mine is subject to a POV Notice, the inspector will issue an order requiring the operator to withdraw all persons in the area affected by the violation except those persons listed in section 104(c) of the Mine Act. All persons except as listed in section 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

#### **TERMINATION OF PATTERN OF VIOLATIONS NOTICE**

A Pattern of Violations Notice shall be terminated if MSHA finds no "significant and substantial" (S&S) violations within 90 days of the POV Notice. If MSHA finds at least one S&S violation in that 90-day period, the mine will remain in POV status thereafter until an inspection of the entire mine finds no S&S violation of a mandatory health or safety standard.

As stated in section 104.4(b), the mine operator may request an inspection of the entire mine or portion of the mine. MSHA will not provide advance notice of the inspection and will determine the scope of the inspection. Inspections of portions of the mine that together cover the entire mine shall constitute an inspection of the entire mine for the purposes of this part.

Mines that have received POV Notices and met the applicable requirements to terminate those notices shall be considered for further POV actions if they meet the POV criteria and may be subject to enhanced inspections.

## Appendix A - Mitigating Circumstances

The preamble to section 104 (78 FR 5063) states there may be extraordinary occasions when a mine meets the POV criteria, but mitigating circumstances make a POV notice inappropriate. For mitigating circumstances to be considered, the mine operator will have to establish such circumstances with MSHA before the Agency issues a POV notice. The types of mitigating circumstances that could justify a decision to not issue a POV notice, or to postpone the issuance of a POV notice to reevaluate conditions in the mine, may include, but are not limited to, the following:

- An approved and implemented corrective action program containing concrete, meaningful measures specifically tailored to address the repeated S&S violations accompanied by positive results in reducing S&S violations;
- A bona fide change in mine ownership that resulted in demonstrated improvements in compliance;
- MSHA verification that the mine has become inactive;
- The amount of time the corrective action program has been in place;
- Other factors affecting the accuracy with which the corrective-action program verifies reductions in S&S violations;

No one mitigating circumstance necessarily shall be determinative, and all mitigating circumstances shall be weighed together on a case-by-case basis.

In rare cases, postponement of a POV Notice could be appropriate where an operator has implemented a corrective action program in a timely fashion, but there has been insufficient time for MSHA to evaluate its effectiveness in reducing S&S violations. In this case, the POV determination could be postponed until the effectiveness of the corrective action program is evaluated through a complete inspection of the mine by MSHA.

After receiving the memorandum from the Administrator notifying them of mines that meet the POV criteria, the District Managers should provide the POV panel with detailed information relevant to making its recommendation, including verification of any information provided by the mine operator used in deciding whether mitigating circumstances exist.

## Appendix B - Guidelines for Corrective Action Programs

MSHA will consider an operator's effective implementation of an MSHA-approved corrective action program as a mitigating circumstance that may justify postponing or not issuing a POV Notice. Mine operators interested in obtaining MSHA approval for a corrective action program should contact their MSHA District office. MSHA will assist in developing appropriate corrective action programs upon request.

The preamble to section 104 states (78 FR 5064) that, in general, programs must contain concrete, meaningful measures that can reasonably be expected to reduce the number of S&S violations at the mine; the measures should be specifically tailored to the compliance problems at the mine; and the measures should contain achievable benchmarks and milestones for implementation. The program must set measurable benchmarks for evaluating the program's effectiveness. Corrective action programs must be submitted, approved, implemented and the operator must be meeting the benchmarks and milestones contained in the approved program in order for the program to be considered as a mitigating circumstance to warrant postponement or non issuance of a POV Notice.

Corrective action programs should address at least the following general subject areas, specifically tailored to the compliance problems at the mine with the specific implementing details for each general subject determined by particular conditions and practices at the mine:

- Corrective actions the operator intends to take, including benchmarks or milestones that are likely to result in meaningful, measurable, and significant reductions in S&S violations;
- Specific S&S frequency rates and the dates by which these rates will be achieved;
- Specific changes the operator will make to improve the quality and/or increase the frequency of examinations conducted by qualified and competent personnel, including examinations for violations of health and safety standards, and the methods by which hazardous conditions will be timely abated;
- Any changes in mine management that recently occurred, or management changes that will affect corrective actions at the mine;
- The specific actions the mine management (superintendent/ mine manager and mine foreman) will take to provide greater attention in the review of the examination books and records and discuss the examination results with examiners each day;
- The frequency with which mine management (mine superintendent / mine manager and mine foreman) will conduct unannounced examinations of the mine to audit mine examinations and compliance with health and safety standards;

- The additional health and safety staff that will be added to the mine to assist in the daily auditing of compliance performance and a description of the authority they will be delegated to halt production / work when violations are identified;
- Specific training miners will receive on miners' rights to report hazards and unsafe conditions and on protection against retaliation;
- Training the mine operator will conduct for mine officials, mine examiners, competent persons and miners to address each of the conditions that caused the unacceptable levels of citations and orders;
- Planned modifications or additions to engineering and/or administrative controls to address specific conditions or practices;
- Identification of the personnel who will be responsible for implementing and monitoring the corrective action program;
- Milestones and benchmarks for implementation of each component of the program, including dates by which they will be achieved;
- How the operator intends to ensure the corrective action program's milestones are achieved and the method by which the operator will update the District Manager on the program's progress. These updates should occur as often as possible, ideally, on a weekly or bi-weekly basis.

While recognizing that no S&S violations are inevitable or acceptable, MSHA expects that most effective corrective action programs would contain the goal of achieving at least:

- a) a 50% reduction in the S&S rate stated on the mine's most recent POV Monitoring Tool report; or
- b) an S&S rate at or below the most recent median S&S frequency rate for mines of similar type and provided on MSHA's POV Single Source Page (see <http://www.msha.gov/POV/POVsinglesource.asp>).

Corrective action programs must be in place prior to POV identification and must be accompanied by positive results to be considered as a mitigating circumstance (78 FR 5063).

The broad purpose of corrective action programs is to make mines safer and healthier by improving mine operators' compliance with regulatory requirements and the Mine Act. It is MSHA's intent that mine operators not abandon these corrective action programs after their goals are met. Mine operators' corrective action programs should establish long-term goals for reducing violations regardless of whether MSHA conducts a POV screening. Abandonment of corrective action programs after MSHA determines not to issue a POV Notice based on the mitigating circumstance of a CAP may be a factor considered in later POV screenings.

In order to maintain long-term improvement, mine operators should amend or redesign existing corrective action programs if MSHA's POV Monitoring Tool indicates their mine is approaching POV status. MSHA is unlikely to consider an existing corrective action program a mitigating circumstance if it has not been amended to address compliance issues that put a mine at risk for a POV Notice as those issues arise.

There may be instances where, even after achieving its S&S rate goal under a corrective action program and avoiding a POV Notice, a mine will continue to meet MSHA's criteria for a Pattern of Violations. Meeting the S&S rate goal in a corrective action program does not prevent MSHA from issuing a mine operator a POV Notice in subsequent POV screenings. For example, a mine with a CAP goal of a 50% S&S rate reduction that reduces its S&S rate from 20.0 to 10.0 has met its goal, and MSHA may decide that is a mitigating circumstance that justifies not issuing a POV Notice. However, the mine's S&S rate may still exceed the rate in MSHA's POV screening criteria (e.g. if the criterion rate is 8.0) and is potentially subject to a POV Notice the next time MSHA conducts a POV screening. In these cases, mine operators should do more than simply maintain their 10.0 S&S rate. Instead, they should implement additional corrective actions to ensure they do not meet the POV screening criteria the next time MSHA conducts a screening.