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SUBJECT: Corrective Action Programs

Scope

This Program Information Bulletin (PIB) is intended for Coal Mine Safety and Health enforcement personnel, Metal and Nonmetal Mine Safety and Health enforcement personnel, mine operators, independent contractors, miners' representatives, and other interested parties.

Purpose

This PIB provides information on submitting a corrective action program for Mine Safety and Health Administration (MSHA) approval. For your convenience, MSHA's *Guidelines for Corrective Action Programs* are attached to this PIB. MSHA strongly encourages mine operators who are at risk of meeting the screening criteria to implement a corrective action program to reduce significant and substantial (S&S) violations

Information

On January 23, 2013, the Department of Labor published a final rule that revised MSHA's Pattern of Violations (POV) regulation in Title 30 Code of Federal Regulations (30 CFR), Part 104. The preamble to the final rule states that:

> "…mine operators who may be approaching POV status have the opportunity to implement a corrective action program, and MSHA considers a mine operator's effective implementation of an MSHA-approved corrective action program as a mitigating circumstance in its POV review." 78 FR 5061.

MSHA's POV Monitoring Tool assists operators in tracking their violation and injury histories related to the POV screening criteria. The tool is available online at www.MSHA.gov on the POV Single Source Page.

While the POV Monitoring Tool is intended to provide "advance warning" to mine operators of the possibility of meeting the POV screening criteria and, therefore, being further considered to receive a POV notice, mine operators, not MSHA, are responsible for monitoring compliance and determining whether to submit a corrective action program to MSHA. As the preamble to the final rule states, "mine operators have the responsibility to constantly monitor their compliance performance and to assure that health and safety conditions are addressed in a timely manner." 78 FR 5062.

Mine operators using the POV Monitoring Tool should not wait until the tool indicates a mine meets all of the screening criteria to submit a corrective action program, but should look at the mine's performance on each part of the POV screening criteria in determining if and when it is appropriate to consider a corrective action program. Further, mine operators should base their evaluation on their knowledge of conditions at the mine and its violation, accident and injury history - including injuries not yet reported to MSHA - to determine whether to submit a corrective action program.

MSHA updates the POV Monitoring Tool on or about the 15th of each month. However, operators should not wait for violations or injuries to appear on the Monitoring Tool before considering a corrective action program. As noted in the preamble to the final rule, "mines receiving an inordinate number of S&S violations over a short period of time may need to develop a corrective action program designed to address the root causes of any recent increases in S&S citations." 78 FR 5062.

In order to maintain long-term improvement, mine operators should amend or redesign existing, approved corrective action programs if MSHA's POV Monitoring Tool indicates their plan is ineffective in that their mine is again close to meeting the screening criteria. MSHA is unlikely to consider an existing, approved corrective action program a mitigating circumstance if the operator has not amended its program to address current compliance issues that put a mine at risk of meeting the POV screening criteria as those issues arise. The POV Home Page includes an S&S Rate Calculator that operators may use to determine if a mine is meeting its goals to reduce or maintain the rate of S&S violations set forth in its corrective action program.

Background
More information about corrective action programs is in MSHA's Pattern of Violations Procedures Summary, which also contains the *Guidelines for Corrective Action Programs* in Appendix B (attached).

Authority
Section 104(e) of the Federal Mine Safety and Health Act of 1977 as amended, 30 U.S.C. 814(e) and 30 CFR Part 104.

Internet Availability
This PIB is viewable on the Internet by accessing MSHA's Home Page (http://www.msha.gov/) and then choosing "Regulations", "Policy and Procedures", and "Program Information Bulletins."

The POV Home Page is viewable on the MSHA Home Page under "News and Media", "Special Initiatives", "Pattern of Violations (POV)". It includes links to the Pattern of Violations Procedures Summary, the Pattern of Violations Monitoring Tool, and the S&S Rate Calculator.

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MSHA Program Policy Manual Holders
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Attachment

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 (78 FR 5064) states 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, and 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 notification 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 numeric screening 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 corrective action program 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 numeric 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 numeric screening criteria the next time MSHA conducts a screening.