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PROCEDURE INSTRUCTION LETTER NO. I11-III-02

FROM: NEAL H. MERRIFIELD
Administrator for
Metal and Nonmetal Mine Safety and Health

KEVIN G. STRICKLIN
Administrator for
Coal Mine Safety and Health

SUBJECT: Compliance Procedures for the Hazard Communication
Standard

Scope

This Procedure Instruction Letter (PIL) applies to all Coal Mine Enforcement Personnel, Metal and Nonmetal Enforcement Personnel, Underground and Surface Mine Operators, Independent Contractors, and Special Interest Groups.

Purpose

This PIL establishes the policies and procedures necessary to ensure uniform enforcement of the Hazard Communication Standard (HazCom).

Procedure Instruction

HazCom is largely a performance-oriented standard with a few specification requirements. HazCom establishes the goal of reducing injuries and illnesses due to chemical hazards in the mining industry, and allows mine operators wide flexibility to develop a HazCom program suited for their mines.

1. Inspection Guidance Documents

There are two documents attached to this PIL which provide inspection guidance to determine when it is appropriate to issue a citation under the HazCom rule. The first document is a table, "Inspection Procedures for HazCom," which lists the specific provisions of the HazCom rule and provides background information on the regulatory intent of each provision. The table also provides inspection procedures to follow when Mine Inspectors find violations. The second document is MSHA's HazCom Compliance Guide

<http://www.msha.gov/regs/complian/guides/hazcom/hazcomcompguide.pdf>

which contains Agency policy on many specific issues. These issues are presented in a question and answer format. Mine Inspectors should consult MSHA's HazCom Compliance Guide for enforcement guidance regarding application of numerous HazCom requirements. Questions not answered in the Compliance Guide, and which present more complicated issues, should be directed to the Chief of Health for Metal/Nonmetal or Coal for resolution, as appropriate. The Compliance Guide will be updated periodically as additional issues are presented to the Chiefs of Health for Metal/Nonmetal and Coal.

2. General Inspection Procedures

Mine Inspectors shall issue citations consistent with existing Agency policy on 104(a) citations for separate and multiple violations. For example, if a mine operator has more than one Material Safety Data Sheet (MSDS) missing from the mine's file of MSDSs, such multiple violations should be treated as one violation, and one citation is to be issued with the list of the missing MSDSs. Mine Inspectors should also issue citations consistent with Agency policy on whether the violation should be designated as "non-S&S," "S&S," an unwarrantable failure, or as a flagrant violation.

3. Training Violations

When miners fail to receive required training under 30 CFR parts 46 and 48, these violations should be cited under section 104(g) of the Mine Act when appropriate. An order issued pursuant to section 104(g) would be appropriate when the Mine Inspector determines that the miner is a hazard to himself/herself and to others. For example, a miner working at a gold mine who receives experienced miner training about the mine's HazCom program, but is not trained about the physical and health hazards of cyanide in his work area, would not have received the requisite safety training as required. In that case, a 104(g) order would be appropriate.

When miners have been properly trained, but there are other violations involving recordkeeping or compensation, for example, a section 104(g) order would be inappropriate, and section 104(a) should be cited.

4. Standard to Cite

Mine Inspectors should always attempt to cite in the first instance to the most specific standard applicable under the HazCom rule. For example, if a label does not display an appropriate hazard warning, then the standard which sets out the requirements for label contents, section 47.42(b) would be cited. If an entire label is missing from a container, the Mine Inspector would cite section 47.41(a).

In addition, if there is evidence during an inspection that the mine operator is not properly implementing the mine's HazCom program, the Mine Inspector may also consider citing pursuant to section 47.31(a). This provision can be used if it is apparent that there is an overall systemic failure at the mine to provide an accessible and effective HazCom program for the mine. Such evidence should be considered as a whole, and may consist of a mine wide failure to ensure that each container for a hazardous chemical has a label; whether MSDSs are available without restriction for the whole mine or an individual work area; whether the mine operator is providing access to HazCom materials, or any other combination of evidence that tends to show that the mine's HazCom program is not providing information to miners about the hazardous chemicals that are used at the mine.

Background

On June 21, 2002, MSHA published a final rule on Hazard Communication (67 FR 42314). The effective date of the HazCom final rule was September 23, 2002, for mines with six or more miners. For mines that employ five or fewer miners, the rule was effective on March 21, 2003.

In general, the substances of MSHA's HazCom requirements are the same as that in the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). MSHA has expressly stated that if a mine operator's HazCom program meets OSHA's HCS requirements, it will generally satisfy MSHA's requirements, except for the coverage of EPA-regulated hazardous waste.

Authority

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 et seq.; 30 C.F.R. Part 47, 30 C.F.R. Part 46 and 30 C.F.R. Part 48

Filing Instructions

This instruction letter should be filed behind the tab marked “Procedure Instruction Letters” in the binder for Program Policy Handbooks and Procedure Instruction Letters.

Issuing Office and Contact Persons

Metal and Nonmetal Mine Safety and Health
Reginald J. Richards, DrPH, CIH (202) 693-9600
E-mail: richards.reginald.j@dol.gov

Coal Mine Safety and Health, Health Division
John Hendley, (202) 693-9534
E-mail: hendley.john@dol.gov

Distribution

All Program Policy Manual Holders
All Underground/Surface Mine Operators
All Independent Contractors
All Special Interest Groups

Attachment

- Inspection Procedures for HazCom