

VOLUME V - COAL MINES

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GENERAL POLICIES AND PROGRAMS

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INTERPRETATION, APPLICATION, AND GUIDELINES
ON ENFORCEMENT OF 30 CFR

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1. The inspector or investigator should consult through normal channels with the district manager.
2. The district manager should contact the Administrator's Office and the appropriate Regional Solicitor's Office.
3. After consultation with the Administrator's Office and an attorney in the Regional Solicitor's Office, promptly report the matter to appropriate state or local law enforcement officials.
4. Cooperate with the state and local officials, but ensure that any evidence which may also be relevant to a possible Mine Act violation is preserved.
5. If state or local law enforcement officials wish to participate in MSHA's investigation, the matter first should be cleared with the Supervisory Special Investigator in the headquarters office.
6. If only evidence or other information is being shared with state or local law enforcement officials, advance clearance from headquarters is not necessary, but the Supervisory Special Investigator should be promptly apprised of any such activities or contacts.

V.G-4 Mine Plan Approval Procedures

Under the Federal Mine Safety and Health Act of 1977, and the implementing standards and regulations, various plans and programs are required to be prepared by the mine operator and submitted to MSHA for approval. Inspectors should review all plans and programs before beginning a AAA inspection so that the plans and programs can be evaluated for adequacy during the inspection. In addition, management systems should be established in each District to ensure that all mine plans and programs are reviewed periodically. The period between reviews should be established on a plan-by-plan basis, except as provided for by Agency standards, such as the 6-month review of ventilation and roof control plans. In addition, the system should provide a record of all such reviews. Mine operators should be promptly advised to update their plans when an MSHA review indicates the plan is no longer adequate.

Among the information required with mine ventilation plans is a map (30 CFR 75.316-1) which shows the projections of anticipated mine development for at least 1 year. At least annually, updated maps should be acquired from mine operators, and one of the 6-

month reviews should result in correspondence with the operator that identifies the material that constitutes the mine's approved plan.

After the initial approval of plans, changes may be requested by the mine operator for approval. If MSHA cannot approve the requested changes or needs additional information, the operator should be notified in writing of what information is needed or why the changes cannot be approved. The process should be completed quickly and the entire plan should not be opened for review, unless it is scheduled for review under the District's management system.

A thorough review of proposed mine plan provisions includes evaluation of comments provided by interested persons, such as the representative of miners. Accordingly when such input is received, it is important that the District review and respond to the information.

Contest of Mine Plan Approval Actions

In those situations when MSHA can no longer accept a provision of an approved plan, cannot approve a provision in a new plan, or cannot approve a proposed change to an approved plan, operators should be afforded the opportunity to contest MSHA's denial of approval. Where the operator disagrees with MSHA and indicates the desire to seek a citation to contest before the Federal Mine Safety and Health Review Commission, a citation should be issued. Normally, this would be a 104(a) citation and not involve unwarrantable failure findings, unless the circumstances justify it. The following several paragraphs illustrate how the three situations described can be handled.

When a plan provision is considered no longer adequate, the plan approval revocation procedures need to be followed. (These procedures are described on pages 3 and 4, under MSHA-Initiated Mine Plan Changes.) Upon revocation of approval, a citation must be issued for operating without an approved mine plan. Abatement can then be accomplished by the operator adopting a plan provision satisfying MSHA's concern. It may be appropriate for the operator to have this acceptable plan provision prepared before the citation is issued so that prompt abatement occurs. With this approach, there is no need to operate in violation of the mine's approved plan, and the violation would be "technical" in nature.

In the case of an operator-proposed change to an existing approved mine plan, if approval of the change is denied, the

operator could notify the District that, as of a certain date, the mine's existing approved plan is no longer adopted by the operator, and that the operator intends to adopt the proposed change which is not approved. On that date, a 104(a) citation would be issued for the operator's failure to have and adopt an approved plan. Abatement would be achieved by the operator promptly adopting the provisions of the most recently approved plan for the mine. Again, there need not be any changes made in the actual mining procedures, and the violation would be "technical" in nature.

The case of a new mine plan with a provision that cannot be approved could be handled in a similar manner. The operator could indicate that mining operations will begin on a particular date, using the plan that contains the provision which is not approved. On the date indicated for starting operations, a citation would be issued for failure to adopt and follow an approved plan, as required by the applicable standard. Abatement would be achieved by the operator promptly adopting provisions that satisfy MSHA's previously documented concerns.

In each of these cases, the operator would have the option of contesting the citation issued and presenting to an administrative law judge the reasons why the disputed plan provision should have been approved. Likewise, we would present our reasons for revoking or denying approval.

Nothing in the above paragraphs is intended to interfere with or change the practice of issuing citations for any failure to follow approved plans found during inspections and investigations.

Criteria and Guidelines in Mine Plan Approvals

On occasion, MSHA has required criteria from the roof control and ventilation standards to be included in plans for all mines as a condition of the approval, without appropriate regard for the specific mining conditions. There have also been instances when Agency "guidelines" have been required in plans in a similar manner. The use of the criteria and guidelines in this manner has been successfully challenged in court and should be discontinued.

MSHA standards require suitable plans to be developed on a mine-by-mine basis. Criteria and guidelines are reference information in the same nature as experience and knowledge of the particular conditions at the mine. Certain criteria or guidelines may have broad application, but their inclusion should be on an "as