

Dated at Arlington, Virginia, this 3rd day of May, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6-7001 Filed 5-8-06; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Section 110(c) of the Federal Mine Safety and Health Act of 1977; Interpretation

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Interpretive bulletin.

SUMMARY: This Interpretive Bulletin sets forth a statement of the Secretary of Labor's interpretation of Section 110(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 820(c), as it relates to agents of Limited Liability Companies (LLCs). The Interpretive Bulletin is considered an interpretive rule and provides an explanation of the Secretary's interpretation of Section 110(c) and the rationale supporting that interpretation. For the reasons set forth below, the Secretary's interpretation is that Section 110(c) of the Mine Act is applicable to agents of LLCs. The effect of the Secretary's interpretation is that agents of LLCs may be held personally liable under Section 110(c) of the Mine Act if they knowingly authorize, order, or carry out a violation of any mandatory health or safety standard under the Act or a violation of or failure or refusal to comply with any order issued under the Act or any order incorporated in a final decision issued under certain provisions of the Act.

DATES: Comments on this Interpretive Bulletin are due June 8, 2006. The Interpretive Bulletin is scheduled to be put into effect July 10, 2006.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your comments regarding this Interpretive Bulletin. Clearly identify your request and send it one of the following ways:

(1) Fax: (202) 693-9441. Include "Interpretive Bulletin regarding Limited Liability Companies" in the subject line of the fax.

(2) By electronic mail to zzMSHA-comments@dol.gov. Include "Interpretive Bulletin regarding Limited Liability Companies" in the subject line of your electronic mail.

(3) Mail/Hand Delivery/Courier: MSHA, Office of Standards,

Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939. If hand-delivered in person or by courier, you must stop by the 21st floor first to check in with the receptionist.

Docket: To access comments electronically, go to <http://www.msha.gov> and click on "Comments" under "Rules and Regulations." All comments received will be posted without change at this Web address, including any personal information provided. Paper copies of the comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2349, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. Ms. Silvey can be reached at Silvey.Patricia@DOL.GOV. (Internet E-mail), (202) 693-9440 (voice), or (202) 693-9441 (facsimile).

To subscribe to the MSHA listserve and receive automatic notification of MSHA **Federal Register** publications, visit the site at <http://www.msha.gov/subscriptions/subscribe.aspx>.

SUPPLEMENTARY INFORMATION

Introductory Statement

The Secretary of Labor is responsible for interpreting and applying statutes she is authorized to administer. More specifically, Congress delegated to the Secretary, acting through MSHA, the authority to administer the Mine Act. See *Secretary of Labor v. Excel Mining, LLC*, 334 F.3d 1, 5-7 (D.C. Cir. 2003); *Secretary of Labor on behalf of Wamsley v. Mutual Mining, Inc.*, 80 F.3d 110, 113-14 (4th Cir. 1996). The interpretation and application of statutory terms to particular factual circumstances is an ongoing process. Publication of all interpretive positions taken by the Secretary is impossible; at times, however, the Secretary has found it useful as a means of notifying the public in general, and interested segments of the public in particular, to publish an Interpretive Bulletin or other documents setting forth the Secretary's interpretive positions with respect to particular provisions of statutes she administers.

The question has arisen whether Section 110(c) of the Mine Act is applicable to agents of LLCs. The LLC is a relatively new business entity which combines the limited liability provided by a corporation with the "pass-through" tax treatment accorded to a partnership. LLCs are like

corporations in that they shield individuals from personal liability; for that reason, they raise concerns similar to those which led Congress to enact Section 110(c).

The status of LLCs under Section 110(c) has become a significant issue under the Mine Act because, in recent years, the number of mine operators organized as LLCs has steadily increased. According to MSHA records, 782 of the Nation's 7,287 active mine operators—approximately 10 percent—now identify themselves as LLCs. The actual number may be significantly greater because MSHA's mine identification forms do not list "LLC" as an option and many LLCs may not identify themselves as LLCs. A number of the Nation's large operators are LLCs.

The purpose of this Interpretive Bulletin is to make the public aware of the Secretary's interpretation of the applicability of Section 110(c) to agents of LLCs—an interpretation the Secretary will apply in administering and enforcing the Mine Act. The Secretary is soliciting comments on the Interpretive Bulletin and will carefully review all comments received. The Secretary believes, however, that the position set forth in the Interpretive Bulletin represents an "interpretive rule" as that term is used in the Administrative Procedure Act, and is therefore not required to go through notice-and-comment rulemaking. See 5 U.S.C. § 553(b)(3)(A); *AMC v. MSHA*, 995 F.2d 1106, 1108-13 (D.C. Cir. 1993). So that the Secretary may carefully consider all comments received, the Interpretive Bulletin is scheduled to be put into effect 60 days after it is published in the **Federal Register**.

Limited Liability Companies

The LLC is a hybrid business entity first recognized in 1977 by the State of Wyoming. LLCs did not attain any significant popularity until 1988; however, when the Internal Revenue Service announced that LLCs could be taxed as partnerships despite their corporation-like liability shield. When the IRS announced in 1997 that LLCs could elect pass-through taxation without regard to the number of corporation-like characteristics they possessed, the number of LLCs grew dramatically.

Text and History of Section 110(c)

Section 110(c) of the Mine Act states as follows:

Whenever a *corporate operator* violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision

under this Act, except an order incorporated in a decision issued under Subsection (a) or Section 105(c), any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d).

30 U.S.C. 820(c) (emphases added). Section 110(c) of the Mine Act was carried over essentially unchanged from the Federal Coal Mine Health and Safety Act of 1969 (Coal Act). See 30 U.S.C. 819(c) (1969). The legislative history of the Mine Act, quoting from the legislative history of the Coal Act, stated:

Civil penalties are not a part of the enforcement scheme of the Metal Act, but they have been part of the enforcement of the Coal Act since its enactment in 1969. The purpose of such civil penalties, of course, is not to raise revenues for the federal treasury, but rather, is a recognition that: '[s]ince the basic business judgments which dictate the method of operation of a coal mine are made directly or indirectly by persons at various levels of corporate structure, [the provision for assessment of civil penalties is] necessary to place the responsibility for compliance with the Act and the regulations, as well as the liability for violations on those who control or supervise the operation of coal mines as well as on those who operate them.' In short, the purpose of a civil penalty is to induce those officials responsible for the operation of a mine to comply with the Act and its standards.

S. Rep. 95-181, Federal Mine Safety and Health Act of 1977, 95th Cong. 1st Session, at 40 (quoting S. Rep. 91-411, Federal Coal Mine Health and Safety Act of 1969, 91st Cong. 1st Session, at 39).

Purpose of Section 110(c)

When a "corporate operator" violates a mandatory health or safety standard under the Mine Act, Section 110(c) of the Act imposes personal liability on "any director, officer, or agent" of the corporation who knowingly authorized, ordered, or carried out the violation. Because a corporation generally serves as a shield against personal liability, corporate directors, officers, and agents generally are not personally liable for legal violations committed by the corporation.¹ Congress's enactment of Section 110(c) reflected its concern that corporate mine operators would have a reduced incentive to comply with Mine Act standards because a corporation would shield the individuals who control and supervise the mine—the corporation's directors, officers, and agents—from personal liability. Section

110(c) imposes liability for Mine Act violations directly on the individuals responsible for the violations. As the Sixth Circuit Court of Appeals has explained:

In a practical sense, any non-corporate mining operation is going to be relatively small, and the probability is that the decision-maker is going to fit the statutory definition of "operator." In a larger, corporate structure, the decision-maker may have authority over only a part of the mining operation. [Section 110(c)] assures that this makes him no less liable for his actions. In a noncorporate structure, the sole proprietor or partners are personally liable as "operators" for violations; they cannot pass off these penalties as a cost of doing business as a corporation can. Therefore, the noncorporate operator has a greater incentive to make certain that his employees do not violate mandatory health or safety standards than does the corporate operator. [Section 110(c)] attempts to correct this imbalance by giving the corporate employee a direct incentive to comply with the Act.

Richardson v. Secretary of Labor, 689 F.2d 632, 633-34 (6th Cir. 1982), cert. denied, 461 U.S. 928 (1983). *Accord United States v. Jones*, 735 F.2d 785, 792-93 (4th Cir.) ("Congress may have believed that in a noncorporate coal mining operation the threat of criminal sanctions against the operator personally would provide a sufficient incentive to comply with the mandatory safety standards. By contrast, in a corporate mining operation, those who are in control might well be insulated from criminal responsibility, the corporation being an impersonal legal entity."), cert. denied, 469 U.S. 918 (1984).

The Interpretive Issue

The threshold issue in this situation is "whether Congress has spoken to the precise question" of the applicability of section 110(c) to agents of LLCs. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). If Congress unambiguously expressed an intent that section 110(c) was not to apply to agents of LLCs, that is the end of the matter. *Ibid.* If the Mine Act is silent or ambiguous with respect to the question, however, an agency interpretation that section 110(c) is applicable to agents of LLCs should be accepted as long as it is reasonable. *Ibid.*

By its terms, Section 110(c) applies when a "corporate operator" violates a Mine Act standard and a director, officer, or agent "of such corporation" knowingly authorized, ordered, or carried out the violation. The threshold issue is thus whether, in enacting section 110(c), Congress unambiguously expressed an intent that section 110(c)

was not to apply to agents of LLCs. The Secretary believes that Congress did not express, and could not have expressed, any intent with respect to agents of LLCs because, when Congress enacted Section 110(c), LLCs effectively did not exist.

The courts have recognized that, over time, conditions may come into existence which Congress did not contemplate when it enacted a statute, but which implicate the concerns Congress was addressing when it enacted the statute. As the Supreme Court stated in *Browder v. United States*, 312 U.S. 335 (1941):

There is nothing in the legislative history to indicate that Congress considered the question of use by returning citizens. Old crimes, however, may be committed under new conditions. Old laws apply to changed situations. The reach of the act is not sustained or opposed by the fact that it is sought to bring new situations under its terms.

312 U.S. at 339 (footnotes omitted). *Accord Weems v. United States*, 217 U.S. 349, 373 (1910) ("Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth."). When confronted with a question of statutory application with respect to which Congress did not express or could not have expressed an intent when it enacted the statute, courts have treated the question as one the resolution of which was delegated to the agency Congress authorized to administer the statute. See *NBD Bank, N.A. v. Bennett*, 67 F.3d 629, 632-33 (7th Cir. 1995); *Zoelsch v. Arthur Andersen & Co.*, 824 F.2d 27, 33 (D.C. Cir. 1987). See also *Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 663-67 (7th Cir. 1998) (where resolution of the question was not delegated to any agency, the court itself filled the void created by Congressional silence by examining the underlying policy concerns), cert. denied, 525 U.S. 1114 (1999); *Robinson v. TI/US West Communications Inc.*, 117 F.3d 900, 904-07 (5th Cir. 1997) (same).

Because Congress expressed no intent with respect to agents of LLCs, the question becomes whether an interpretation that Section 110(c) is applicable to agents of LLCs is reasonable. See *Chevron*, 467 U.S. at 842-43; *Excel Mining*, 334 F.3d at 6. The Secretary believes that it is. LLCs generally create the same sort of shield against personal liability which led Congress to impose personal liability on the directors, officers, and agents of corporations. Indeed, LLCs fit within the legal definition of a "corporation."

¹ In contrast, a partnership generally does not shield individuals from personal liability.

See Black's Law Dictionary (7th ed. 1999) at 341 (a "corporation" is "[a]n entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it * * *; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up [and] exists indefinitely apart from them * * *"). See also Webster's Third New International Dictionary (2002) at 510 (a "corporation" is "a group of persons * * * treated by the law as an individual or unity having rights and liabilities distinct from those of the persons * * * composing it * * *"). Significantly, a number of LLCs in the mining industry are the sort of relatively large and corporately structured entities which Congress had in mind when it enacted Section 110(c). The Secretary believes that the underlying objective Congress identified when it enacted the Coal Act in 1969 and reiterated when it enacted the Mine Act in 1977—to place responsibility for compliance and liability for violations "on those who control or supervise the operation of * * * mines as well as on those who operate them"—will best be advanced if Section 110(c) is interpreted as being applicable to agents of LLCs.

For all of the foregoing reasons, the Secretary believes that the interpretation set forth in this Interpretive Bulletin is permissible under the Mine Act, and that it will advance the Act's objectives in cases involving LLCs by imposing legal liability on those individuals within the LLC who actually make the decisions with regard to safety and health in the mine.²

Dated: May 3, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

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² The Secretary recognizes that Section 110(c) has been held not to apply to agents of partnerships because, by its terms, Section 110(c) applies only to agents of corporations. *Paul Shirel and Donald Guess, employed by Pyro Mining Co.*, 15 FMSHRC 2440 (1993), *aff'd*, 52 F.3d 1123 (D.C. Cir. 1995) (unpublished). That holding has no bearing in this situation, however, because partnerships, unlike LLCs, existed and were a well-known form of business organization when Congress enacted the Mine Act.

The Secretary does not address in this Interpretive Bulletin whether Section 110(c) is applicable to agents of non-traditional business entities other than LLCs. The Secretary will address the applicability of Section 110(c) to the agents of such entities as the question arises.

NATIONAL SCIENCE FOUNDATION

National Science Board; Hearing on International Science Partnerships

Date And Time: May 11, 2006.

Place: George Washington University, Elliott School of International Affairs, 1957 E Street 7th Floor, City View Room, Washington, DC.

Contact Information: Please refer to the National Science Board Web site (<http://www.nsf.gov/nsb>) for updated schedule.

NSB Office: Amanda K Slocum, (703) 292-7000.

Status: This hearing is open to the public.

Agenda:

7:30 a.m.–8 a.m.: Registration

8 a.m.–8:10 a.m.: Opening Comments

- Dr. Jon Strauss, Chair, Task Force on International Science

8:10 a.m.–8:20 a.m.: Welcoming Remarks

- Dr. Stephen Joel Trachtenberg, President, George Washington University

8:20 a.m.–8:30 a.m.: Introductions and Overview of Proceedings

- Dr. Michael Crosby, Executive Officer, NSB

8:30 a.m.–9:30 a.m.: Panel I—The Role of Mission Agencies in International Science Partnerships

9:30 a.m.–10:45 a.m.: Panel II—Funding for International Science Partnerships

10:45 a.m.–11 a.m.: Break

11 p.m.–12:15 p.m.: Panel III—The Role of Non-Governmental Organizations in International Science

1:45 p.m.–3:15 p.m.: Panel IV—Policy Perspectives on International Science Partnerships

3:15 p.m.–3:30 p.m.: Summaries of Discussions and Next Steps for the Task Force

Michael P. Crosby,

Executive Officer and NSB Office Director.

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NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the

following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* "Generic Customer Satisfaction Surveys and NRC Form 671, Request for Review of a Customer Satisfaction Survey Under Generic Clearance."

3. *The form number if applicable:* NRC Form 671.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Voluntary reporting by the public and NRC licensees.

6. *An estimate of the number of responses:* 1,770.

7. *The estimated number of annual respondents:* 1,770.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 393 hours. (.222 hours per response).

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 8, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be