

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Parts 50 and 100**

RIN 1219-AB63

Criteria and Procedures for Proposed Assessment of Civil Penalties/Reporting and Recordkeeping: Immediate Notification of Accidents**AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Proposed rule; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to make nonsubstantive organizational changes to existing regulations for reporting accidents and determining penalty amounts for failure to report certain accidents. These changes would allow MSHA to automate the Agency's assessment process for violations involving immediate notification of an accident. They would improve the efficiency and effectiveness of MSHA's assessment process.

DATES: MSHA must receive comments by midnight Eastern Standard Time on March 1, 2010.

ADDRESSES: Comments must be identified with "RIN 1219-AB63" and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Electronic mail:* zzMSHA-comments@dol.gov. Include "RIN 1219-AB63" in the subject line of the message.
- *Facsimile:* 202-693-9441. Include "RIN 1219-AB63" in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at silvey.patricia@dol.gov (e-mail), 202-693-9440 (voice), or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:**I. Availability of Information**

MSHA will post all comments on the Internet without change, including any

personal information provided. Access comments electronically at <http://www.msha.gov> under the *Rules and Regs* link. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

II. Companion Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register**, MSHA is publishing a direct final rule. This companion proposed rule and the direct final rule are substantively identical. MSHA is publishing this companion proposed rule to speed notice and comment rulemaking should the Agency withdraw the direct final rule. MSHA will consider comments to this companion proposed rule as comments to the direct final rule and *vice versa*.

MSHA has determined that the changes in this proposed rule would meet the criteria for a direct final rule because they involve nonsubstantive changes that deal with MSHA's management of the processing of civil penalties. MSHA does not anticipate that this proposed rule would result in any changes in the way violations for failure to report certain accidents are evaluated or assessed. MSHA expects no opposition to the changes and no significant adverse comments. However, if MSHA receives a significant adverse comment, the Agency will withdraw the direct final rule by publishing a notice in the **Federal Register**.

A significant adverse comment is one that explains:

- (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or
- (2) Why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, MSHA will consider whether it warrants a substantive response in a notice and comment process.

III. Regulatory Background

On March 22, 2007, MSHA published a final rule on Criteria and Procedures for the Proposed Assessment of Civil Penalties (72 FR 13591). The final rule revised the Agency's civil penalty

assessment regulations under 30 CFR part 100 and implemented the civil penalty provisions of sections 5 and 8 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. Section 5 of the MINER Act specifies penalties of not less than \$5,000 and not more than \$60,000 for violations involving failure to report three categories of accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; or (3) entrapment of an individual at the mine which has a reasonable potential to cause death. MSHA included this MINER Act requirement in the special assessment provision of the existing civil penalty regulations. The special assessment process is MSHA's existing procedure for manually reviewing violations to determine civil penalties.

Under existing § 50.10, operators must report accidents within 15 minutes, once the operator knows or should know that the accident has occurred. The existing regulation does not distinguish between types of accidents, but includes the twelve categories of accidents as defined in § 50.2(h). Under the existing procedures for processing penalties, MSHA manually reviews every violation for failure to report an accident to identify the three categories of accidents for which the higher penalty is applicable.

IV. Section-by-Section Analysis

MSHA is proposing to change the existing regulation addressing the immediate notification of accidents in § 50.10 to separately reflect the three categories of accidents in section 5 of the MINER Act, which require specific penalties for failure to report. This proposed rule would change existing § 50.10 to require that the operator immediately contact MSHA in the event of the following accidents: (1) Death of an individual at the mine; (2) injury of an individual at the mine which has a reasonable potential to cause death; (3) entrapment of an individual at the mine which has a reasonable potential to cause death; or (4) any other accident.

Under the proposed rule, by changing the immediate notification regulation to separately identify the categories of accidents that require penalties specified in section 5 of the MINER Act, MSHA would no longer have to manually review all failure to report violations. Instead, a citation would identify the type of accident as either § 50.10(a), (b), (c), or (d), which would allow MSHA to program its automated assessment system to assure that the higher penalties required under the MINER Act are assessed. Violations of

§ 50.10(a), (b), and (c) would automatically receive a proposed penalty of \$5,000 or more, up to \$60,000, under the regular assessment provision of § 100.3. Violations of § 50.10(d) would be subject to a regular assessment under § 100.3. It is important to note that the special assessment provision would continue to apply to failure to report violations when conditions warrant.

MSHA believes that this proposed rule would provide the mining community with more transparency relative to violations involving failure to report accidents. Specifying the type of accident in the citation would make it readily apparent when the violation would be subject to the higher penalty. In addition, automating proposed assessments for most violations for failure to report an accident would improve the efficiency and effectiveness of MSHA's assessment process.

This proposed rule would redesignate existing special assessment provision § 100.5(f) as § 100.4(c), without change. The section heading of § 100.4 would be changed to read, "Unwarrantable Failure and Immediate Notification." Because these categories of accidents would be separately identified in the immediate notification regulation in § 50.10 of this proposed rule, MSHA would no longer need to manually review them under special assessment. As mentioned before, MSHA would continue to review these violations for a special assessment when conditions warrant.

V. Regulatory Analyses

A. Paperwork Reduction Act Statement

This proposed rule would not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12866—Regulatory Planning and Review

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended

regulations. MSHA has determined that this proposed rule would not have an annual effect of \$100 million or more on the economy; therefore, the rule would not be an economically significant regulatory action under section 3(f)(1) of E.O. 12866.

The changes contained in this proposed rule are nonsubstantive and organizational in nature. MSHA does not anticipate that this proposed rule would result in any changes in the way violations for failure to report certain accidents are evaluated or assessed. The changes would facilitate more efficient use of MSHA's resources and administrative processes. The changes would neither alter the compliance burden placed on mine operators nor impact the health or safety of miners.

List of Subjects

30 CFR Part 50

Investigations, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 100

Administrative practice and procedures, Mine safety and health, Penalties.

Dated: December 22, 2009.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is proposing to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 50—NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS, INJURIES, ILLNESSES, EMPLOYMENT, AND COAL PRODUCTION IN MINES

1. The authority citation for part 50 continues to read as follows:

Authority: 29 U.S.C. 577(a); 30 U.S.C. 811, 813(j), 951, 957, 961.

2. Revise § 50.10 to read as follows:

§ 50.10 Immediate notification.

The operator shall immediately contact MSHA at once without delay and within 15 minutes at the toll-free number, 1-800-746-1553, once the operator knows or should know that an accident has occurred involving:

- (a) A death of an individual at the mine;
- (b) An injury of an individual at the mine which has a reasonable potential to cause death;
- (c) An entrapment of an individual at the mine which has a reasonable potential to cause death; or
- (d) Any other accident.

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

3. The authority citation for Part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

4. In § 100.4, revise the section heading and add paragraph (c) to read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

* * * * *

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than \$5,000 and not more than \$60,000 for the following accidents:

- (1) The death of an individual at the mine, or
- (2) An injury or entrapment of an individual at the mine, which has a reasonable potential to cause death.

§ 100.5 [Amended]

5. Amend § 100.5 by removing paragraph (f).

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