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MSHA PUBLISHES THREE NEW PROGRAM POLICY LETTERS

During the final week of March 2008, the Mine Safety and Health Administration (“MSHA”) posted three new Program Policy Letters (“PPLs”) to the agency’s website at www.msha.gov.

- **PPL No. P08-III-01** concerns MSHA’s new process for tracking qualifications, certifications and approvals.
- **PPL No. P08-III-02** clarifies MSHA’s procedures pertaining to both regular and special assessments.
- **PPL No. P08-V-02** concerns the approval of communications and tracking devices required by the Mine Improvement and New Emergency Response Act of 2006 (“MINER Act”).

PPL Nos. P08-III-01 and P08-III-02 are applicable to both coal and metal/nonmetal mines. PPL No. P08-V-02 is applicable only to mines that are required to have permissible equipment. Each of the new Program Policy Letters is summarized below.

PPL No. P08-III-01

Beginning April 21, 2008, MSHA is requiring all persons applying for or updating an MSHA qualification, certification, or instructor approval to first obtain a MSHA Individual Identification Number (“MIIN”). A MIIN is a unique 8-digit number preceded by the letter “M.” MIINs will be used in place of Social Security numbers and will be required for persons applying for or modifying one of the following qualifications, certifications, or approvals:

- Electrical Qualification Training, Low/Medium Voltage (Underground)
- Electrical Qualification Retraining, Low/Med Voltage (Underground)
- Methane/Oxygen Qualification (Underground/Surface)
- Hoisting Qualification (Underground/Surface)
- Explosives/Blasting Qualification
- Impoundment Qualification
- MSHA Approved Instructors (Part 48 and Part 49, Electrical)
- Underground Foreman
- Underground Assistant Foreman
- Preshift Examiner
- Surface Foreman

Additionally, persons who hold an MSHA certification for collection of respirable dust samples and/or certification for the maintenance of respirable dust sampling units must obtain a MIIN to continue to perform these functions. MSHA will void any respirable dust sample submitted on or after July 1, 2008, that does not have a valid MIIN recorded in the certified person (item 13) section of the dust data card that accompanies each respirable dust sample. Program Information Bulletin No. P08-07, which was posted to MSHA’s website on March 31, 2008, provides additional information concerning the submission of respirable dust samples using the MIIN. See <http://www.msha.gov/regs/complian/PIB/2008/pib08-07.asp>.

To register for a MIIN, an applicant can do one of the following:

- Go to MSHA's website at www.msha.gov and click on "Forms/Online Filing."
- Call the toll-free phone number 1-800-579-2647.
- Fill out MSHA Form 5000-46, "Request for MSHA Individual Identification Number (MIIN)" and
 - Send by secure facsimile to (303) 231-5474 or
 - Mail to: Mine Safety and Health Administration
Qualification and Certification Unit
P.O. Box 25367, DFC
Denver, CO 80225

MSHA is changing its policy in response to the increase in identity theft and the concerns that some mining industry personnel have expressed regarding MSHA's use of Social Security numbers to record and collect information. The full text of PPL No. P08-III-01 is available on MSHA's website at <http://www.msha.gov/regs/complian/ppls/2008/PPL08-III-1.asp>.

PPL No. P08-III-02

When MSHA revised its civil penalty regulations in 30 C.F.R. Part 100 on March 22, 2007, it removed the list of eight specific categories of violations that were required to be reviewed for special assessment. PPL No. P08-III-02 is intended to clarify: (1) when and how citations/orders should be forwarded to MSHA's Office of Assessments; (2) the types of citations/orders that enforcement personnel must review to determine if a special assessment is warranted; and (3) the types of violations for which special assessment is mandatory.

Referral of Citations/Orders for Regular Assessment (30 C.F.R. § 100.6). The PPL requires District Managers to ensure that upon the closure of the safety and health conference, expiration of the 10-day safety and health conference request period, or the District Manager's decision not to schedule a safety and health conference, citations that are abated, citations that are replaced by orders and all orders that are to receive regular assessment are marked assessment-ready in the MSHA Standardized Information System ("MSIS"). Unabated citations must be marked assessment ready in MSIS 12 months from the date of issuance.

The Directorate of Program Evaluation and Information Resources is updating MSIS to automate the marking of citations and orders for assessment within 11 months from the date of issuance. The PPL defines MSHA's interim policy for marking violations assessment-ready in MSIS.

Special Assessment (30 C.F.R. § 100.5). Special assessment is the process of determining an appropriate penalty without using the penalty tables in 30 C.F.R. § 100.3. While District Managers may recommend any violation for special assessment, the following types of violations *must* be specially assessed:

- Section 104(b) "failure to abate" orders where the daily penalty has been invoked pursuant to Section 110(b) of the Mine Act.
- Those cited to miners related to smoking or the carrying of smoking materials under Section 110(g) of the Mine Act.
- Flagrant violations as defined in the MINER Act.
- Violations cited under 30 C.F.R. § 50.10 for failure to provide immediate notification to MSHA of a death of an individual at a mine or an injury or entrapment of an individual which has reasonable potential to cause death.
- Violations involving personal liability under Section 110(c) of the Mine Act.
- Violations involving discrimination under Section 105(c) of the Mine Act.

Additionally, special assessment *review* is required for all violations that contribute to a fatality or serious injury; however, special assessment is not mandatory for those violations as they may involve circumstances for which MSHA determines, in its discretion, special assessment is not warranted.

The PPL instructs District Managers not to mark citations/orders *recommended* for special assessment as being “assessment-ready.” The Office of Assessments will review each recommendation for special assessment and make the final decision, conferring with the Coal or Metal and Nonmetal Mine Safety and Health Program areas as necessary. Once a final decision has been made concerning the District Manager’s recommendation for special assessment, the Office of Assessments will mark the citation/order assessment-ready in MSIS.

The full text of PPL No. P08-III-02 is available on MSHA’s website at <http://www.msha.gov/regs/complian/ppls/2008/PPL08-III-2.asp>.

PPL No. P08-V-02

PPL No. P08-V-02 establishes guidelines for communication and tracking devices under 30 C.F.R. Part 23 to address the provisions of the MINER Act. The MINER Act specifies that “[n]ot later than 3 years after the date of enactment [of the MINER Act] ... a[n emergency response] plan shall, to be approved, provide for post accident communication between underground and surface personnel via a wireless two-way medium, and provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan the reasons such provisions cannot be adopted.”

MSHA’s Approval and Certification Center is implementing the following guidelines when processing applications for the approval of communication and tracking products for those underground mines or operations required to have permissible equipment:

- Any component or system used to provide voice, text, or signaling data (e.g., tracking) that is intended to remain operational in the event of an emergency is considered a telephone or signaling device and evaluated under 30 C.F.R. Part 23.
- Line powered devices must be equipped with a standby power source to allow continued operation in the event the line power is lost during an emergency. The standby power source must be capable of providing additional operating capacity (24 hours recommended) based on an 80% idle time, 10% transmit time and 10% receive time, denoted as 80/10/10 ratio.
- When operating under standby power, all components of a communication or tracking system must be MSHA-accepted as intrinsically safe, or housed in an MSHA certified explosion-proof enclosure. Communication and tracking system components include any interconnecting cables.
- All cables between communication and tracking components must be MSHA-approved as flame-resistant or enclosed in MSHA-approved, flame-resistant hose conduit.
- Intrinsically safe batteries of portable assemblies that are housed in enclosures too large to be subjected to the MSHA intrinsic safety drop test (greater than 5 kg) will be evaluated in accordance with the battery enclosure requirements of §§ 7.44(a), (b), (d), (e), (f), (h), (l) and (m).
- Standby power sources that include rechargeable batteries must be designed or equipped with means to mitigate the explosion hazard of battery off-gassing. Examples of available mitigation techniques include venting of the enclosure or automatic de-energization when an explosive gas concentration reaches 20% of the gas’ lower explosive limit.
- The standby power source will be subject to MSHA’s “Criteria for the Evaluation and Test of Intrinsically Safe Apparatus and Associated Apparatus” (<http://www.msha.gov/techsupp/acc/application/acri2001.pdf>) to ensure that it does not create a hazardous condition in the de-energized line power portion of the power supply or in the in-coming line power cable (back-feed protection).

- Any potential for radio frequency interference (RFI) with blasting circuits must be detailed by the approval applicant. The approval applicant must specify the maximum output power, normal operating frequency, and the safe distance from blasting circuits.
- Person-wearable tracking tags are considered portable apparatus and therefore are subjected to the MSHA intrinsic safety drop test. Machine-mounted (asset) tracking tags are subjected to an impact test.
- Cap lamps powering communication and/or tracking related components are required to meet the performance requirements specified in § 19.9(a) when both the cap light and communication and/or tracking component are in operation. To assure sufficient operational capability in various scenarios, the cap lamp battery should be capable of providing sufficient power to effectively operate the communication and/or tracking component for a period of time beyond the 10-hour minimum (4 hours additional recommended).
- Where lightning arrestors for conductors between surface and underground locations are required, system approval documentation must specify the lightning arrestor used to comply with §§ 57.12069 and 75.521, and to ensure that it does not invalidate the Part 23 approval.

The full text of PPL No. P08-V-02 is available on MSHA's website at <http://www.msha.gov/regs/complian/ppls/2008/PPL08-V-2.pdf>.

If you would like any further information or assistance regarding this Safety and Health Bulletin, please feel free to contact Timothy R. Olson at (303) 659-5040 or tim@tro-law.com.

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