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PROGRAM POLICY LETTER NO. P11-V-09

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SUBJECT: Guidance on Issuance of Orders Under Sections 103(j) and (k)
of the Mine Act

Scope

This Program Policy Letter (PPL) is intended for Mine Safety and Health Administration personnel, mine operators, miners' representatives, independent contractors, and other interested persons.

Purpose

The purpose of this PPL is to establish a uniform policy for the issuance of section 103(j) and 103(k) orders (orders issued under 30 U.S.C. 813(j) or (k) of the Federal Mine Safety and Health Act of 1977 (Mine Act)) in accidents where a Mine Safety and Health Administration (MSHA) Authorized Representative is not present at the mine site.

Policy

Upon learning of a mine emergency, unless MSHA is already present, MSHA should verbally issue a section 103(j) order to the operator, including initial instructions, as soon as possible. The order, including any instructions, should be reduced to writing and transmitted to the operator as soon as practicable. The order should be written so as to protect all persons engaged in the rescue and recovery operation, as well as any other persons on-site.

Upon MSHA's arrival on-site and following assessment of conditions, the section 103(j) order, including all instructions, may be modified to reflect that MSHA is now proceeding under the authority of section 103(k) of the Mine Act. Parties on-site should be informed that any activities that are rescue or recovery related will be permitted through subsequent modifications of the section 103(k) order. The section 103(k) order is intended to protect all persons on-site, including those involved in the emergency operation or accident investigation. As such, all parties on-site are subject to the section 103(k) order and any subsequent modifications. Each proposed action should be reviewed by the designated MSHA person on-site before the section 103(k) order is modified and before the action is commenced. MSHA has the authority to issue a section 103(k) order unilaterally. However, every effort should be made to gain consensus among the parties involved to obtain the safest and most effective outcome.

Background

MSHA has historically made greater use of orders under section 103(k) rather than section 103(j). A section 103(j) order is appropriate in certain circumstances; however, MSHA has the authority to issue discrete section 103(j) orders directing operators to take specific actions and it may do so without taking complete control over rescue and recovery operations.

Section 103(j) provides:

In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

Section 103(k) provides:

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to ensure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to

recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

Authority

Sections 103(j) and 103(k) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 801 et seq. at §§ 813(j) and 813(k).

Filing Instructions

This policy letter should be filed behind the tab marked "Program Policy Letters" at the back of the Program Policy Manual.

Internet Availability

This program policy letter may be viewed on the World Wide Web by accessing the MSHA home page (<http://www.msha.gov>) and choosing "Compliance Info" and "Program Policy Letters."

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Coal Mine Operators and Metal and Nonmetal Mine Operators