

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF DEEP MINE SAFETY**

DOCUMENT NUMBER: 580-3300-001

TITLE: Underground Mine Accident and Production/Manhour Reporting

EFFECTIVE DATE: January 1, 1999

AUTHORITY: Section 501(b) and 702 of the Pennsylvania Bituminous Coal Mine Act, 52 P.S. §§ 701-501(b) and 701-702; Section 282 and 1402 of the Anthracite Coal Mine Act, 52 P.S. §§ 70-282 and 70-1402; and Section 1915-A of the Administrative Code of 1929, 71 P.S. § 510-15.

POLICY: Underground coal mine operators are required to submit monthly and annual reports to the Department detailing production, employment, and lost time accidents. The operators are also required to submit similar information to the Mine Safety and Health Administration (MSHA). The Department believes that the data submitted to MSHA on the 7000-1 form (Mine Accident, Injury, and Illness Report) and 7000-2 form (Quarterly Mine Employment and Coal Production Report) is sufficient to achieve the purpose of Section 501(b) of the Pennsylvania Bituminous Coal Mine Act and Section 282 of the Anthracite Coal Mine Act. The 7000-1 form is submitted within 10 days of a lost time accident and the 7000-2 form is submitted quarterly.

PURPOSE: The purpose of this technical guidance is to assist the operators by providing an option to submit reports on production, employment, and lost time accidents on the same forms and at the same frequency as the MSHA requirements. In lieu of the BDMS monthly lost time accident report required in Section 501(b) of the Bituminous Coal Mine Act and Section 282 of the Anthracite Coal Mine Act, operators can submit accidents using the MSHA 7000-1 form within 10 days of an accident. Manhour and production data can be submitted on MSHA's 7000-2 form each quarter.

APPLICABILITY: The guidance is applicable to all Deep Mine Safety staff and all underground coal mine operators.

DISCLAIMER: This document establishes the framework within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 2 pages

LOCATION: Volume 9, Tab 16

PROCEDURES:

This policy gives the underground coal mine operators the option to submit the monthly and annual information as required by Section 501(b) of the Pennsylvania Bituminous Coal Mine Act and Section 282 of the Anthracite Coal Mine Act on a quarterly basis and report lost time accidents on an ongoing basis using MSHA 7000-1 and 7000-2 forms.

1. Quarterly production and employment reports may be submitted on the MSHA 7000-2 forms within 15 days after the end of each calendar quarter. In lieu of a monthly report to BDMS, on manhours and production, a copy of the MSHA 7000-2 form for each mine (permit #) can be submitted. Production reporting is required even if the amount produced is zero. The submittal of the quarterly reports for the year satisfies the annual report requirements.
2. Lost time accidents may be submitted on the MSHA 7000-1 forms within 10 working days of when it was determined a lost time accident occurred.
3. Reports in the bituminous region are sent to:

Bureau of Deep Mine Safety
Fayette County Health Center
100 New Salem Road, Room 167
Uniontown, PA 15401
4. Reports in the anthracite region are sent to:

Bureau of Deep Mine Safety
Five West Laurel Boulevard
Pottsville, PA 17901
5. Any operator intending to use all or part of this alternative reporting should notify the Bureau of their decision to do so and indicate when it will be implemented.

COMMENT/RESPONSE DOCUMENT

580-3300-001 - Underground Mine Accident and Production/Manhour Reporting

The comment period for this draft technical guidance ended on August 10, 1998. The Bureau received comments from Bituminous Mine Inspector Lynn D. Jamison (dated July 28) and Roderick A. Fletcher, Director, Bureau of Mining and Reclamation (dated August 20). No other comments were received.

Mr. Jamison's comment: I object to management and/or this administration making law changes and masking it as technical guidance. The law requires operators to submit said reports to the district mine inspector on a monthly basis, and cannot be arbitrarily changed without being legislated. We have state forms for correspondence, and these should not be substituted for federal forms.

Response: Refer to attached letter dated September 14 to Lynn Jamison from Richard Stickler. In addition to this letter, it is noted that the underground bituminous and underground anthracite acts do not specify the form of the report.

Mr. Fletcher's comments:

Comment 1: All of the Acts require monthly submission of production information. What is the legal basis for allowing operators to change to a quarterly submission of production data? Has counsel been asked to comment on the ramifications of this proposed change in reporting requirements?

Response: Refer to attached memo dated September 18 to Richard Stickler from Assistant Counsel Marc Roda.

Comment 2: The document should be revised to indicate that it applies to coal deep mine operators only. We do not have the statutory authority to require that noncoal operators submit reports on a quarterly basis.

Response: We agree that the document only applies to coal deep mine operators. We have a general agreement with the noncoal deep mine operators to submit production manhour and accident reports.

Comment 3: Under the section titled "Authority", change 1915 to 1917 in the reference to the Administrative Code.

Response: Section 1917-A concerns the abatement of nuisances. We are not moving to abate a nuisance. Instead we are allowing more flexible reporting. This is more properly encompassed under Section 1915-A concerning duty to enforce mining laws.

Comment 4: We recommend that you remove names of who the reports are to be sent to. It's okay to list the division where you want them sent and possibly even the position. However, in the event that the person leaves the position or you want to change your internal procedures, you won't have to update the TGD.

Response: We agree with this recommendation and the guidance document will only make reference to the Bureau.

Comment 5: The guidance document should also describe how the information is to be handled once it is submitted and how it is to be made available to the public.

Response: The Bureau intends to compile the quarterly reports in the division as described in the draft Procedures, #3 and #4. Copies will be forwarded to the district mine inspector and to the Bureau of Mining and Reclamation for quarterly reports and inclusion into the Annual Report on Mining Activities which is published and made available to the public.

Comment 6: We recommend that you remove "and industrial minerals" from paragraph 4 under Procedures.

Response: Refer to response #2.

Comment 7: “Coal” should be inserted between “underground” and “mine operators” in the general paragraph under Procedures.

Response: Refer to response #2.

Comment 8: “Coal” should be inserted between “underground” and “mine operators” under Applicability.

Response: Refer to response #2.

Comment 9: The MSHA form does not have the following information that is currently captured by the Department: permit number, pounds of explosives, inspection district, and coal seam mined. How will this information be captured for input into the computer system.? Is it necessary to report pounds of explosives used? If not, was any research conducted to determine who uses the information and whether they have an alternate source for obtaining the information?

Response: Users of the information had an opportunity to comment. There was no justification offered to continue reporting information additional to that required on forms 7000-1 and 7000-2.

Comment 10: Will a report form be required for each permit that the operator has? If not, we will not know how much coal was mined from each permit. The TGD should state that a report for each permit must be submitted regardless of whether they produced any tonnage for the preceding quarter or not.

Response: This TGD is for the submittal of tonnage/manhour and accident reports using federal report forms (7000-1 and 7000-2). We have not seen any underground mining operations which have more than one permit number for the mine. We will add the language to item #1 Procedures to say, “Submittal of 7000-2 form is required for each mine (permit #) even if no production occurred during the quarter.”

Comment 11: There is nothing noted in the document that indicates what actions the Department will take if an operator does not submit the reports as required.

Response: Actions by the Department concerning non-submittal of reports will not change as a result of this policy.

Comment 12: Since the information will be recorded (input) in Harrisburg, why are the reports being directed to the Uniontown and Pottsville offices first? This will result in double handling of the reports and delay input into the computer. If they are going to the respective offices for proofing and additional information needed for input into the database, it should be so stated in the TGD.

Response: The reports are going to be submitted to Uniontown and Pottsville so that the information can be used to establish accident frequency rates and accident data analysis. Presently, the monthly reports are sent from the operator to the district mine inspector who then submits to Harrisburg. This procedure allows the operator to submit the reports to the prospective division office who will then forward them to Harrisburg. This will not add any delays that do not already exist.

Comment 13: The MSHA report form may not be able to be used for reporting surface mine information, which is currently submitted on a different form. Will there be a problem with the Department using two different report forms for reporting the same information?

Response: This technical guidance is to address underground coal mines. This does not affect any reports that are required under other statutes.

Comment 14: Could you use other report forms such as the OSM-1 or a form devised specifically for the Department to capture all of the information that we need? Is the information on the MSHA 7000-2 report form verified in any way, specifically the tonnage information?

Response: This technical guidance is in response to the one-stop reporting initiative MRM-10. Underground operators who are Deep Mine Safety clients presently submit information to MSHA on 7000-1 and 7000-2 reports. The verification of tonnage on the 7000-2 report is the same as the existing information submitted on the Monthly Tonnage, Man Hour and Accident Report (5800-FM-DMS0104).

Fayette County Health
Center100 New Salem Road, Room 167
Uniontown, PA 15401
September 14, 1998

Bureau of Deep Mine Safety

724-439-7469
Fax 724-439-7324

Mr. Lynn D. Jamison
President, Local 2541
AFSCME
R. R. 1, Box 40
Vintondale, PA 15961

Dear Mr. Jamison:

This is in response to your July 3, 1998, letter expressing the AFSCME Local's opposition to and concern with recently implemented technical guidance documents to assist in the implementation of the Bituminous Coal Mine Act ("Act"). Your letter raised two concerns: (1) technical guidance is being used to mask law changes and circumvent the Act; and (2) inspectors will be held legally liable for actions taken in accordance with these guidance documents.

Let me assure you that the Department's purpose in developing technical guidance is neither to mask changes to or circumvent the Act. I agree that only the General Assembly has the authority to change the Act. However, the General Assembly has imposed on the Department the duty and responsibility to administer and enforce the Act. In administering and enforcing the Act, as with many other statutes, the Department is faced with interpreting provisions containing ambiguous or conflicting language. In order to fulfill its duties and responsibilities, the Department develops and uses technical guidance to establish a framework for the consistent application of particular provisions of the Act. The following procedures are followed to ensure that technical guidance documents are developed to be consistent with the letter and spirit of the law:

- (a) The Bureau, usually with assistance from its attorneys, develops a draft technical guidance document to address a general question of interpretation or application.
- (b) In many instances, the Bureau solicits input from the Pennsylvania Coal Association (PCA) and the United Mine Workers of America (UMWA) to assist in developing a draft technical guidance document.
- (c) The draft technical guidance is submitted to the Office of Chief Counsel for review and approval as to legality.
- (d) To ensure that all interested parties have a chance to review and comment on the draft technical guidance:
 - (1) A notice is published in the *Pennsylvania Bulletin*. This notice summarizes the draft technical guidance, identifies how interested persons can obtain a copy of the draft technical guidance, and specifies where and by when comments are to be submitted to the Bureau.
 - (2) A copy of the draft technical guidance is also posted on the Department's web site.

- (e) After the comment period closes, before finalizing the technical guidance, the Department reviews all comments and prepares a comment/response document summarizing and responding to all comments. Again, the Bureau's attorneys assist in these steps.
- (f) The finalized technical guidance and comment/response documents are submitted to the Office of Chief Counsel for review and approval as to legality.
- (g) A notice that the technical guidance has been added to the Department's index of technical guidance documents is then published in the *Pennsylvania Bulletin*. The technical guidance is also posted on the Department's web site.

Hopefully, this summary of how the Bureau develops technical guidance documents will allay the Local's concern that technical guidance is being used to circumvent the Act. In light of allegations raised by Representative Roberts, the Local's concern about liability is understandable. I have contacted the lawyers who advise me that so long as inspectors act in accordance with the Department's stated policies, *i.e.* the technical guidance, they are shielded from liability by the doctrine of sovereign immunity. Unfortunately, there is no way to prevent someone from commencing legal actions against inspectors who have carried out their duties under the law. Enclosed is a memorandum from Deputy Secretary Robert C. Dolence addressing the Department's defense of any inspectors named in such legal actions.

In authorizing alternative technologies or procedures, the Department does not intend to circumvent the requirements of the Act. In general, Sections 334 and 702 of the Act allow an operator to adopt new technologies or methods which are at least as safe as those required by the Act. Over the years the Department has reviewed a number of requests for using alternative technologies or methods. In recent years the Department developed and implemented a technical guidance specifying the procedures to ensure that the Department's approval or denial of these requests are consistent with the letter and spirit of the law. I am enclosing a copy of this technical guidance for your information.

Recently, I and members of my staff met with the PCA and UMWA for the purpose of improving the Department's procedures for reviewing variance requests. We look forward to comments we may receive from the Local on how these review procedures can be improved.

Sincerely,

Richard E. Stickler
Director
Bureau of Deep Mine Safety

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Office of Chief Counsel
September 18, 1998
717-787-7060

SUBJECT: MSHA Accident Reports

TO: Richard Stickler
Director
Bureau of Deep Mine Safety

FROM: Marc A. Roda
Assistant Counsel
Bureau of Regulatory Counsel

This is in response to your request for an opinion concerning the legal justification for the draft technical guidance allowing operators to submit the MSHA 7000-1 and 7000-2 reports to the Bureau of Deep Mine Safety in lieu of the monthly tonnage and fatal and loss time accident report submitted to the District Mine Inspector. As explained below, Section 702 of the Bituminous Coal Mine Act authorizes the Department to accept the MSHA reports in lieu of the monthly reports.

Background

Since at least 1961, mine operators have submitted monthly to the District Mine Inspectors a tonnage production report and a fatal and loss time accident report. Sometime after 1966, MSHA required mine operators to submit a tonnage report on a quarterly basis (Report 7000-2). Also, within ten days of a fatal or loss time accident, the operator was required to submit to MSHA a report detailing the accident. These reports contain the same information being submitted to the Department in the monthly reports. In an effort to reduce the paperwork requirements faced by operators, the Bureau has drafted a technical guidance allowing operators to submit the MSHA reports in lieu of the 30-day reports.

Analysis

Section 501(b) of the Bituminous Coal Mine Act requires mine operators to submit to the District Mine Inspector monthly reports detailing the tonnage produced and the fatal or loss time accidents that have occurred for the previous month. Nothing in this section allows the Department to modify this reporting requirement.

However, the Bituminous Coal Mine Act contains provisions which generally allow the Department to waive or modify statutory requirements. Section 702 provides:

Adoption of new items or methods

Nothing in this act shall be construed to prevent the adoption or use by any operator of new machinery, equipment, tools, supplies, devices, methods and processes, if such new machinery, equipment, tools, supplies, devices, methods and processes accord protection to personnel and property substantially equal to or in excess of the requirements set forth in any portion of this act.

§701-702. This section allows operators to adopt new processes or methods that accord protection to personnel and property substantially equal to or in excess of the applicable requirements of the Act.

In this case, the information contained in the MSHA 7000-1 and 7000-2 reports is identical to the information provided in the Section 501(b) reports. The only difference is the timing of the reports and that the 7000-1 are individual reports and not monthly compilations. As a result, Department can use these reports in essentially the

same way it is now using the Section 501(b) reports. Therefore, Section 702 allows operators to submit the MSHA 7000-1 and 7000-2 reports in lieu of the Section 501(b) monthly reports.

Please let me know if you have any other questions or concerns regarding this issue.