

sets out a statement of purpose, and the Secretary's disagreement with the Federal Mine Safety and Health Review Commission's interpretation of the phrase "significant and substantial." The document provides a basis for the Secretary's interpretation based on the plain language of the Mine Act and its legislative history, and the underlying purpose and enforcement scheme of the Mine Act.

The "significant and substantial" designation is an important part of the Mine Act's scheme for promoting miner safety and health because a "significant and substantial" finding forms the basis for possible withdrawal of miners under Section 104(d) of the Mine Act when combined with an "unwarrantable failure" finding and the basis for a possible withdrawal of miners under Section 104(e) when a pattern of "significant and substantial" violations is established. The Secretary's decision to publish the Interpretative Bulletin was a result of concern that, in certain cases, violations that present real hazards to miner safety and health are not being determined to be "significant and substantial." In *Hobet*, miners were exposed to dust being generated by a high wall drill at a mine which in the past, had been placed on a reduced dust standard due to high levels of silica. Studies by the National Institute for Occupational Safety and Health and x-ray surveillance efforts at surface coal mines have demonstrated that such exposures result in serious and sometimes fatal lung disease. In another instance, it was determined that the failure to follow the mine evacuation plan and withdraw miners outby during a belt fire was not "significant and substantial" (S&S) because the fire was quickly extinguished. In a recently decided case, the administrative law judge found that stuck rollers on a conveyor did not constitute an S&S violation, even though there were accumulations of coal on rollers and belt structures, rollers had been worn flat by rubbing, and rollers were warm to the touch. However, because the Secretary did not establish the exact amount of material in the accumulations the violation was found to be non S&S. In the Secretary's view, such violations clearly involve hazards that demand serious attention by mine operators because they present real threats to miner safety and health. Challenges to the S&S determinations made by inspectors on citations such as these have led to the Secretary's conclusion that the Commission's interpretation creates uncertainty about hazards to miners' safety and health and, more

importantly, misleads miners and mine operators to underestimate the risk of injury, illness or death.

As the Secretary indicated in the Interpretative Bulletin, the Secretary's interpretation is that a violation is "significant and substantial" if it presents a hazard that is more than remote or speculative in nature—that is, if it presents a hazard that has a *realistic possibility of occurring*. The Secretary believes that applying the "significant and substantial" designation to such violations will result in a realistic application of the "significant and substantial" clause and will serve to focus enforcement efforts on those violations that pose a real threat to miner safety and health. The Secretary's interpretation does not treat as "significant and substantial" all violations that are non-technical in nature.

MSHA believes that the Interpretative Bulletin will have a consequential impact on the mining community. MSHA is interested in receiving comments from the mining public on the implementation, application, and effect of the Secretary's interpretation on the mining public. MSHA is especially interested in comments from miners, mine operators, and other mine industry groups that may be affected by the Secretary's interpretation. The Agency's solicitation of such public comment does not indicate that the Secretary intends to or is required to engage in notice-and-comment rulemaking with respect to her interpretation of the "significant and substantial" phrase.

Dated: February 17, 1998.

J. Davitt McAtee,
Assistant Secretary for Mine Safety and Health.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-97-17]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information regarding occupational injuries and illnesses has been approved

by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT:

Joseph J. DuBois, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone (202) 219-6463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1997 (62 FR 31848-31849), the Agency announced its intent to request an extension of approval for the OSHA Data Collection System. This data collection will request occupational injury and illness data and employment and hours worked data from selected employers in the following Standard Industrial Classifications (SICs):

- 20-39 Manufacturing
- 0783 Ornamental Shrub and Tree Services
- 4210 Trucking & Courier Services, Ex. air
- 4220 Public Warehousing and Storage
- 4230 Trucking Terminal Facilities
- 4490 Water Transportation Services
- 4510 Air Transportation, Scheduled
- 4580 Airports, Flying Fields, & Services
- 4783 Packing and Crating
- 4953 Refuse Systems
- 5010 Motor Vehicles, Parts, and Supplies
- 5050 Metals and Minerals, Exc. Petroleum
- 5093 Scrap and Waste Materials
- 5140 Groceries and Related Products
- 5180 Beer, Wine, and Distilled Beverages
- 5210 Lumber and Other Building Materials
- 8050 Nursing and Personal Care Facilities

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218-0209. The approval expires 12/31/1998. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated February 13, 1998.

Charles N. Jeffress,
Assistant Secretary.

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