

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 20, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

Docket No. VA 2023-0021

v.

GMS MINE REPAIR &
MAINTENANCE, INC.

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

DECISION

BY: Jordan and Baker, Commissioners

This proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act” or “Act”), addresses legal issues of safeguard enforceability and issue preclusion. GMS Mine Repair & Maintenance, Inc. (“GMS”) is an independent contractor providing services at Buchanan Mine #1. An inspector with the Department of Labor’s Mine Safety and Health Administration (“MSHA”) cited GMS for failing to comply with a safeguard notice previously issued to the mine’s production-operator.¹ The safeguard requires that rail mounted vehicle operators adhere to block light signals controlling traffic in the underground mine.

GMS concedes that it violated the requirements of the safeguard; a GMS miner traveled the track after encountering a red stop light, resulting in a head-on collision and serious injuries to multiple miners. However, GMS argues that it cannot be held liable because it was not specifically issued the safeguard by the Secretary. It argues that 30 C.F.R. § 75.1403-1(b) requires the Secretary of Labor to provide operators with written notice of a safeguard prior to

¹ Safeguards are effectively mine-specific mandatory standards directed at reducing transportation hazards in underground coal mines. *See* 30 U.S.C. § 874(b); *Wolf Run Mining Co.*, 659 F.3d 1197, 1201-02 (D.C. Cir. 2011), *aff’g* 32 FMSHRC 1228 (Oct. 2010). An MSHA Inspector may issue a written safeguard notice advising an operator of conduct that is prohibited or required and may thereafter issue a citation for the operator’s alleged failure to comply. 30 C.F.R. § 75.1403-1(b). Here, the safeguard was issued to the mine’s former production-operator, Consolidation Coal Company. *Jt. Stips.* 10, 11. When the relevant citation was issued to GMS, the mine was owned and operated by Buchanan Minerals, LLC. *Jt. Stip.* 1.

enforcement, and although GMS meets the definition of an operator it received no such written notice.² GMS also asserts that the Secretary is precluded from relitigating this issue because a different Administrative Law Judge previously issued a decision finding a different safeguard unenforceable against GMS in the absence of written notice from the Secretary.

In the current proceeding, the Administrative Law Judge concluded that the prior Judge's decision was not a final judgment of the Commission and had no preclusive effect. 46 FMSHRC 824, 830 (Sept. 2024) (ALJ). She then interpreted section 75.1403-1(b) to require written notice to "mine operators." She found the safeguard had been issued to the mine's owner-operator, and GMS had constructive notice of the safeguard's requirements. Accordingly, she determined that the safeguard was enforceable against GMS and affirmed the citation. *Id.* at 833. GMS appeals and asks the Commission to vacate the citation.

The Commission conducts *de novo* review of legal issues arising from a decision on summary judgment. *E.g., West Alabama Sand & Gravel, Inc.*, 37 FMSHRC 1884, 1887 (Sept. 2015). For the reasons below, we conclude that the Judge's nonbinding decision in the prior proceeding does not have preclusive effect here. We also hold that a valid safeguard issued in writing to any operator at a mine may subsequently be enforced against other operators at that mine (including independent contractors). If written notice was provided to an operator at the mine consistent with 30 C.F.R. § 75.1403-1(b), and another operator at the mine has constructive notice of the safeguard, *separate* written notice by the Secretary is not required for the safeguard to be enforceable against that second operator.

Here, the relevant safeguard was properly issued to the mine's former production-operator, and GMS had constructive knowledge of the safeguard's requirements. Accordingly, we affirm the Judge's finding that the safeguard was enforceable against GMS.

We will address the topic of issue preclusion as a threshold determination first. Then, we will discuss the enforceability of this safeguard against this operator based upon the safeguard standard and the particular facts present here.

I.

Issue Preclusion

The doctrine of issue preclusion, also called collateral estoppel, prevents a party from relitigating an issue that has been actually and necessarily decided in a prior case involving the same parties. *E.g., Montana v. United States*, 440 U.S. 147, 153 (1979); *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). Final administrative adjudications that meet these requirements may have preclusive effect. *E.g., B&B Hardware*, 575 U.S. 148. However, issue preclusion is ultimately an equitable doctrine. *E.g., PenneCom B.V. v. Merrill Lynch & Co., Inc.*, 372 F.3d 488 (2d Cir. 2004). Certain conditions may render preclusion inappropriate even if the baseline requirements are met. For example, a decision should not be granted preclusive effect if doing so would be contrary to Congressional intent or the public good, or if the common issue is

² Initially, GMS also claimed the safeguard did not fix a time for compliance as required by 30 C.F.R. § 75.1403-1(b). It has since withdrawn that argument. PDR at 8; Reply at 13 n.4.

a pure question of law. *E.g.*, *Astoria Federal Savings and Loan Assoc. v. Solimino*, 501 U.S. 104, 107 (1991); *Env't Def. v. U.S. E.P.A.*, 369 F.3d 193, 203 (2d Cir. 2004); *United States v. Moser*, 266 U.S. 236, 242 (1924). For the reasons below, we find that even if the baseline requirements have been met, preclusion is inappropriate in this instance.

A. Factual and Procedural Background

As detailed further below, GMS was cited for violating a safeguard which required compliance with the mine's underground traffic control system. GMS was not separately issued written notice of the safeguard by the Secretary, although the safeguard's requirements were included in training materials provided to GMS by the production-operator. GMS concedes that it violated the safeguard; the issue is whether the safeguard can be enforced against GMS.

In 2018, a citation was issued to GMS for failing to comply with a different safeguard at a different mine. That safeguard was issued to Consol Energy, the mine's owner-operator, and requires workers to be in a safe position when using cables to move equipment. GMS never received written notice of the safeguard from the Secretary, although Consol provided GMS with a summary of the mine's safeguards.

GMS contested the citation, and a Commission Judge vacated the citation on three grounds: the safeguard was not enforceable against GMS because section 75.1403-1(b) provides that only those operators who have been advised of the safeguard in writing by the Secretary may be cited; the safeguard was facially invalid because it did not specify the hazard and remedy or fix a time for compliance; and the safeguard did not apply to the factual circumstances described in the citation. *GMS Mine Repair & Maintenance, Inc.*, 42 FMSHRC 135, 137-40 (facts), 140-45 (analysis) (Feb. 2020) (ALJ). The Judge's decision was not appealed.

In the current proceeding, GMS argued below that the issue of whether a safeguard may be enforced against GMS in the absence of written notice from the Secretary had already been addressed and resolved in the prior matter, therefore the parties are precluded from relitigating the issue. The Judge rejected GMS's argument. She determined that the prior judgment was neither final nor necessary, because Judges' decisions are nonbinding and the case was decided on multiple grounds. 46 FMSHRC at 830. Accordingly, she went on to address whether the safeguard was enforceable against GMS and ultimately affirmed the citation.

On appeal of the collateral estoppel issue, GMS contends that a judgment need not be precedential to be final, and that most courts have given preclusive effect to alternate holdings. The Secretary asserts that Commission Judges' nonbinding decisions cannot have preclusive effect and further argues that public policy precludes estoppel in this case.

B. Disposition

The issue currently before us was actually decided in a prior decision involving the same parties. 42 FMSHRC at 140-42 (holding that a safeguard issued to an owner-operator could not be enforced against GMS in the absence of written notice from the Secretary). Although the earlier decision was decided on multiple grounds, courts generally consider "necessary" any

finding that was independently sufficient to support the judgment. *E.g., Intell. Ventures I LLC v. Cap. One Fin. Corp.*, 937 F.3d 1359, 1375-76 (Fed. Cir. 2019). The Judge’s decision had also attained finality, as it was not appealed to the Commission. *See Hitchens v. Cnty. of Montgomery*, 98 Fed. App. 106, 112 (3d Cir. 2004).

However, that does not end our analysis. We find it inappropriate to grant preclusive effect to the prior Judge’s decision. Congress did not intend for nonbinding Judges’ decisions to have preclusive effect on the Commission. Furthermore, the issue in common is a pure question of law, and preventing the parties from re-litigating in this instance would be contrary to the public good.

First, the principles of preclusion generally apply to final administrative adjudications “*except* ‘when a statutory purpose to the contrary is evident.’” *Astoria*, 501 U.S. at 107 (emphasis added) (citation omitted); *also Duvall v. Atty Gen. of U.S.*, 436 F.3d 382, 387 (3d Cir. 2006) (noting that preclusion should not “frustrate congressional intent”). The Mine Act envisions the appellate level as the body tasked with formulating precedent. *See* 30 U.S.C. § 823(d)(1) (Judges’ decisions become final if not taken up for review); 30 U.S.C. § 823(d)(2)(B) (cases may be taken up for review “upon the ground that the decision may be contrary to law or Commission policy, or that a novel question of policy has been presented”). Congress clearly did not intend for the Commission to be bound by the decision of an Administrative Law Judge.

Consistent with this intent, Commission Procedural Rule 69(d) states that a Judge’s decision “is not a precedent binding upon the Commission.” 29 C.F.R. § 2700.69(d). Addressing comments on this rule prior to final publication, the Commission explicitly stated that a “judge’s decision not reviewed by the Commission does not have such preclusive effect” because the Commission “is not bound by the unreviewed decisions of its judges.” Procedural Rules, 58 Fed. Reg. 12158-02, 12163 (Mar. 3, 1993) (discussing Rule 72, incorporated as Rule 69(d) at 71 Fed. Reg. 44190 (Aug. 4, 2006)). Here, GMS seeks to grant preclusive effect to a Judge’s decision that was not appealed to the Commission. Furthermore, as discussed below, the common issue here is one of legal interpretation. Granting preclusive effect to the earlier decision would effectively make a Judge’s legal analysis binding on the Commission, contrary to Congressional intent.

We clarify that *Commission* decisions may have preclusive effect. *See, e.g., BethEnergy Mines, Inc.*, 14 FMSHRC 17, 26 (Jan. 1992). We only find it inappropriate to grant preclusive effect to decisions by an *Administrative Law Judge*. Additionally, we reject the Judge’s determination that the prior decision was “not a valid and final judgment.” 46 FMSHRC at 830. A judgment by an Administrative Law Judge that is not taken up for review becomes a “final decision of the Commission.” 30 U.S.C. § 823(d)(1). Preclusion is inappropriate here because the earlier decision was *nonbinding on the Commission*, not because it is nonfinal. *Cf. Hitchens*, 98 Fed. App. at 112.

Second, preclusion is inappropriate here because the common issue between the two proceedings is a pure question of law. The Supreme Court has recognized that preclusion does “not apply to unmixed questions of law.” *Moser*, 266 U.S. at 242. Here, the cases do share a basic framework: GMS was cited for failing to comply with a safeguard issued to the owner-

operator of the mine where it was providing services and did not directly receive written notice from the Secretary. However, the two cases involve different safeguards issued at different mines. More significantly, no knowledge of the specific facts of the case(s) is required to resolve the determinative question: does section 75.1403-1(b) entitle contractors to written notice of a safeguard prior to the issuance of a citation? The only issue shared by the two proceedings is a legal question of regulatory interpretation. Significantly, this case was decided by the ALJ on cross-motions for summary judgment, indicating that the parties were aware that this concerned a purely legal issue. *See KenAmerican Resources, Inc.*, 38 FMSHRC 1943, 1946 (Aug. 2016) (“the party moving for summary judgment bears the initial burden of showing that there are no genuine disputes as to material fact.”). As a result, preclusion is not appropriate.

This exception for unmixed questions of law is particularly relevant given the unusual characteristics of the regulated community. As the Supreme Court explained, a party should not be prevented from challenging a previously enunciated rule of law simply because the parties are the same. *Moser*, 266 U.S. at 242; *Montana*, 440 U.S. at 162. As the Secretary noted at oral argument, the community regulated by the Mine Act is relatively small. The same parties routinely come before the Commission, and it is not unusual for the same parties to litigate the same legal issue more than once, under different facts arising at different mines. Oral Arg. Tr. 49. Indeed, this is what occurred here. If the Commission were to grant a decision preclusive effect over future proceedings involving different mines and different safeguards, simply because they involved the same question of regulatory interpretation, it “would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.” *Env’t Def.*, 369 F.3d at 203 (citing *United States v. Mendoza*, 464 U.S. 154, 160 (1984)).

Finally, granting preclusive effect to the prior decision would be contrary to a Congressionally intended public good. As noted above, issue preclusion is not appropriate where it would be contrary to Congressional intent. *Duvall*, 436 F.3d at 391. It is also inappropriate where it would be contrary to the public good. *E.g.*, *Tipler*, 443 F.2d at 128; *Env’t Def.*, 369 F.3d at 203; also The Restatement (Second) of Judgments § 28(5)(a). Logically, issue preclusion is doubly inappropriate where it implicates both these factors. *See Fayette Elec. Co-Op.*, 316 NLRB 1118, 1119-20 (1995) (finding a “compelling need to permit re-litigation” where the prior finding could deter protected activity contrary to the statute’s purpose and the public interest).

Here, preclusion would be contrary to the safety-promoting purposes of the Mine Act. *See* 30 U.S.C. § 801(g) (The purpose of the Act is to protect the health and safety of miners); *e.g.*, *Nally & Hamilton*, 38 FMSHRC 1644, 1651 (July 2016). Allowing the prior decision to function as a contractor-specific precedent increases the danger to miners in locations where GMS provides services. As the Judge noted, production operators are in the best position to know the composition of their workforce. 46 FMSHRC at 833. The Secretary only learns that a contractor has begun providing services at a mine through reports or inspections. Sec’y Br. at 11. If GMS cannot be cited for violating an existing safeguard until it receives written notice from the Secretary, there will necessarily be a period of time—after GMS enters a service contract but before the Secretary learns the contractor is onsite and provides notice—when GMS

has no legal obligation to comply with the safeguard, and miners are not protected from the hazard.

Additionally, if GMS cannot be cited unless it receives written notice from the Secretary, GMS may have reduced incentive to comply with known safeguards for which it lacks formal notice. *E.g.*, *Elmer W. Davis*, 2024 WL 4713188 (OSHR ALJ Sept. 30, 2024) (granting preclusive effect would “offend public policy” by reducing an employer’s incentive to maintain a safety program). Preventing re-litigation of this issue endangers miners, contrary to the safety-promoting purpose of the Mine Act. Granting preclusive effect to the prior decision is contrary to a Congressionally mandated public good and therefore inappropriate.

In sum, the parties are not precluded from relitigating the issue of safeguard enforceability arising in this proceeding. Accordingly, the issue is addressed below.

II.

Enforceability of the Safeguard

Our conclusion that the legal issue before us is not precluded from our review does not end our analysis. We must still determine whether this safeguard is enforceable against GMS in the absence of actual written notice by the Secretary to GMS. For the reasons set forth below, we find in the affirmative.

Congress has authorized the Secretary to provide safeguards to minimize the hazards associated with the transportation of men and materials in underground coal mines. 30 U.S.C. § 874(b). The Secretary’s regulatory provisions implementing this authority set out the criteria by which she may require safeguards “on a mine-by-mine basis.” 30 C.F.R. § 75.1403-1(a). Procedurally, an authorized representative of the Secretary must “in writing advise the operator of a specific safeguard which is required . . . [and] fix a time in which the operator shall provide and thereafter maintain such safeguard.” 30 C.F.R. § 75.1403-1(b). If the condition prompting the safeguard is not fixed and maintained thereafter, the operator shall be issued a citation. *Id.* Effectively, therefore, safeguards are mine-specific mandatory standards. *Wolf Run Mining Co.*, 659 F.3d 1197, 1201-02 (D.C. Cir. 2011), *aff’g* 32 FMSHRC 1228 (Oct. 2010).

GMS asserts that independent contractors providing services at a mine fall within the Mine Act’s general definition of an “operator” (30 U.S.C. § 802(d)) and therefore, consistent with the text of section 75.1403-1(b), the Secretary must advise a contractor of a safeguard in writing prior to enforcement. GMS Br. at 7. Conversely, the Secretary asserts that safeguards are mine-specific rather than operator-specific and suggests that once a valid safeguard notice has been issued to any on-site operator, it becomes effective and enforceable for all on-site operators. Sec’y Br. at 7; Oral Arg. Tr. 31-32, 35. The Judge concluded that it is sufficient for the Secretary to provide written notice to the “mine operator.” 46 FMSHRC at 833.

The legal question before us, then, is one of regulatory interpretation: does the requirement that the Secretary “in writing advise the operator” prior to enforcement require her to provide written notice to each and every on-site operator, to any on-site operator, or to the

mine's production-operator? In practical and specific terms, the question before us is whether an independent contractor providing services at a mine may violate with impunity an otherwise valid safeguard that was issued to the mine's production-operator, simply because the Secretary did not separately provide that contractor with written notice of the safeguard. For the reasons below, we find that it may not.

A. Factual and Procedural Background

This matter was decided below on cross-motions for summary decision.³ Accordingly, the material facts are uncontested. Buchanan Mine #1 is an underground coal mine with a rail haulage system. Traffic is controlled by "block lights"—red and green lights that indicate right of way and coordinate track usage to prevent collisions. 46 FMSHRC at 825-26; Jt. Ex. 3.

On February 5, 2013, in response to a vehicle collision, MSHA issued Safeguard No. 8202805 requiring "all rail mounted equipment at this mine site to follow the block light system" and "plac[ing] the operator on notice that failure to follow the block light system will result in more stringent enforcement." The safeguard notice was issued to Consolidation Coal Company, the mine's production-operator at the time. Jt. Stips. 10-12; Jt. Ex. 3.

Buchanan Minerals, LLC ("Buchanan") subsequently became the production-operator at the mine and entered into a labor services agreement with GMS. As an independent contractor performing services at the mine, GMS is an "operator" as defined in section 3(d) of the Mine Act. Under the terms of the labor service agreement, GMS is required to adhere to mandatory safety standards and provide training to GMS personnel working at the mine. The training GMS provided to its employees (based on materials provided by Buchanan) included block light system training but did not specifically mention safeguards. Jt. Stips. 1, 3-4, 13-16.

In August 2022, two personnel carriers at the mine collided when a GMS employee improperly changed a block light from red to green (indicating that the trackway was clear when it was not). An MSHA inspector subsequently issued Citation No. 8312039 to GMS alleging a failure to comply with Safeguard No. 8202805. The citation was evaluated as significant and substantial and the result of moderate negligence. Jt. Stips. 8, 17-22; Jt. Ex. 1.

GMS concedes that, if Safeguard No. 8202805 is valid and enforceable against GMS, a violation occurred. Jt. Stip. 23. The parties also stipulate that prior to the issuance of Citation No. 8312039, no authorized representative of the Secretary had provided GMS with written, electronic or verbal notice of Safeguard No. 8202805. Jt. Stip. 24.

The parties filed cross-motions for summary decision. In relevant part, GMS asserted that the safeguard is not enforceable against GMS pursuant to the plain text of section 75.1403-1(b), which requires written notice to operators. The Secretary countered that safeguards are mine-specific mandatory standards that must be uniformly enforced against all operators at the mine, including contractors.

³ The parties filed two rounds of motions. The initial motions were denied due to an insufficient factual record. The parties filed updated stipulations on February 23, 2024, and then filed renewed motions. In this decision, "Jt. Stip." refers to the updated Joint Stipulations.

The Judge denied GMS’s motion and granted the Secretary’s motion. In relevant part, she explained that production-operators have both the autonomy to control operations and the responsibility of ensuring compliance, and are therefore in the best position to know the composition of their workforce and ensure that contractors are adequately informed. She concluded that the “only reasonable reading” of section 75.1403-1(b) is that MSHA must advise the *mine* operator in writing. She also determined that GMS had constructive notice of the safeguard, because Buchanan had properly ensured that contract employees were adequately trained on the safeguard’s requirements. 46 FMSHRC at 833. In light of these findings and the parties’ stipulations, the Judge affirmed Citation No. 8312039 as issued.

B. Disposition

For the reasons below, we agree with the Secretary’s interpretation. The structure and purpose of section 75.1403-1(b) plainly demonstrate an intent that safeguards be enforceable against all operators at a mine once properly issued in writing to any operator at that mine. Accordingly, an otherwise valid safeguard issued to a mine’s production-operator may later be enforced against another operator at the mine (including an independent contractor), even if that other operator did not directly receive written notice of the safeguard from the Secretary, so long as the operator had sufficient constructive notice of the safeguard’s requirements to satisfy due process. Here, the safeguard was validly issued to the mine’s production-operator and GMS received constructive notice, so the safeguard is enforceable against GMS.

In finding the “right answer” to questions of regulatory interpretation, courts must carefully consider the regulation’s structure and purpose.⁴ *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019); *also, e.g., Rock of Ages Corp. v. Sec’y of Labor*, 170 F.3d 148, 155 (2d Cir. 1999) (regulations should be read as a whole and interpreted consistently with their protective purpose). The Secretary is statutorily authorized to provide safeguards to minimize hazards associated with the transportation of men and materials. 30 U.S.C. § 874(b). The regulation implementing this authority permits the Secretary to issue safeguards on a “mine-by-mine basis,” via written notice to the operator, and to thereafter issue citations for failure to comply. 30 C.F.R. §§ 75.1403-1(a), (b). In other words, the structure and purpose of the safeguard provision is to allow the Secretary to promulgate mine-specific mandatory standards to minimize transportation hazards. *E.g., Wolf Run*, 659 F.3d at 1201-02.

⁴ Under *Kisor v. Wilkie*, questions of deference only arise if the relevant regulation is genuinely ambiguous *even after* considering its text, structure, history and purpose. 588 U.S. 558, 573, 575 (2019). While the Supreme Court recently addressed the framework for statutory interpretation in *Loper Bright Ent. v. Raimondo*, 603 U.S. 369 (2024), *Kisor* remains good law with respect to regulatory interpretation. *E.g., U.S. v. Prather*, 138 F.4th 963, 975 (6th Cir. 2025). Here, we find section 75.1403-1(b) unambiguous in light of its structure and purpose. By the same token, however, the Secretary’s interpretation is consistent with the regulation’s structure and purpose. Accordingly, we would find the Secretary’s interpretation reasonable if the regulation were ambiguous, and we would also find it to be the “best” reading consistent the framework laid out in *Loper Bright*, 603 U.S. at 373-74.

In turn, the Mine Act declares that operators are primarily responsible for ensuring miner safety and requires “each operator”—defined to include independent contractors—to comply with mandatory standards promulgated by the Secretary. 30 U.S.C. §§ 801(a), (e), (g); 802(d). In simple terms: each operator must ensure miner safety and comply with mandatory standards, independent contractors are operators, and safeguards are mandatory standards. Accordingly, independent contractors must ensure miner safety and comply with any safeguards in effect at the mine where they are providing services. Like any other mandatory standard, a safeguard must be enforceable against *each* operator at the mine where it is in effect.⁵

Interpreting section 75.1403-1(b) to require separate written notice to each onsite contractor prior to enforcement would allow contractors to violate mandatory standards that already exist at a mine, without consequence, simply because they had not received written notice from the Secretary. This puts miners at risk of injury or death, as indeed occurred here. Conversely, interpreting section 75.1403-1(b) to require an initial written notice to an on-site operator (at which point the safeguard goes into effect as a mine-specific mandatory standard enforceable against any other operators working at the mine) is consistent with both the basic rule that all operators must comply with mandatory standards in effect at a mine, and the broader safety-promoting principles of the Mine Act. *See Rock of Ages*, 170 F.3d at 155 (choosing the regulatory interpretation that would encourage greater vigilance where a contrary ruling would endanger miners).

The safety concerns raised by GMS’ interpretation could be resolved if every on-site contractor were to receive direct written notice of every relevant safeguard *prior* to beginning work. However, we agree that requiring the Secretary to timely reissue every safeguard to every contractor would be “impossible” (Sec’y Br. at 11) or at least “highly impractical” (46 FMSHRC at 833). As noted previously, MSHA only learns that a contractor has begun providing services at a mine when it receives a report or conducts an inspection. 46 FMSHRC at 832; Sec’y Br. at 11. There is no legal requirement that an operator inform MSHA that it has hired new contractors. This raises timeliness concerns. A contractor could be onsite for weeks, or even complete a project, before MSHA learns of its presence and reissues the relevant safeguards. The Secretary testified that, given the “significant” numbers of both safeguards and contractors in underground coal mines, implementing a system to collect the required information in a sufficiently timely fashion to ensure miner safety would be a “substantial burden.” Oral Arg. Tr. 43-44. We further note that placing the practical burden of ensuring contractor compliance on MSHA rather than the production-operator is contrary to Congress’ explicit intent. 30 U.S.C. § 801(e).

Of course, courts must also carefully consider the plain text of the relevant provision. *Kisor*, 588 U.S. at 575. However, we reject GMS’ assertion that the plain language of section 75.1403-1(b) requires separate written notice to *every* operator.⁶ First, that is arguably not a

⁵ Of course, a safeguard must still be valid—i.e., it must be issued in writing, fix a time for compliance, and identify the hazard and remedy with specificity—to be enforceable. *See* 30 C.F.R. § 75.1403-1(b); *e.g.*, *Am. Coal Co.*, 34 FMSHRC 1963, 1967 (Aug. 2012).

⁶ GMS is correct, however, that the Mine Act defines “operator” to include independent contractors working on site at a mine. 30 U.S.C. § 802(d). The Judge’s interpretation of the

“plain text” argument. The relevant provision requires written notice to “the” operator, not “each” or “every” operator. 30 C.F.R. 75.1403-1(b). Whether the provision is read as GMS’ “every operator” or the Secretary’s “any operator,” some degree of interpretation is required. Accordingly, the provision should be interpreted consistent with its structure and intent. *Kisor*, 558 U.S. at 575.

Second, even apparently clear language should not be enforced as written if the resulting meaning would be contrary to the regulator’s intent or would lead to absurd results. *E.g.*, *United States v. Ryan*, 284 U.S. 167, 175 (1931); *Dyer v. United States*, 832 F.2d 1062, 1066 (9th Cir. 1987); *Wolf Run*, 32 FMSHRC at 1678-79. Even if the text of the provision supported GMS’ interpretation on its face, for the reasons outlined above, we find that requiring the Secretary to provide separate written notice of every safeguard to every independent contractor working at every mine cannot comport with the intent of the safeguard provisions or the safety-promoting purposes of the Act. *See Central Sand & Gravel Co.*, 23 FMSHRC 250, 254 (Mar. 2001) (rejecting as absurd an interpretation that would “negate much of [the standard’s] protective intent”).

Safeguards are mine-specific mandatory standards enforceable against all operators at the mine where the standard is in effect. The only interpretation of the notice requirement in section 75.1403-1(b) that comports with this purpose, as well as with the broader safety-promoting purposes of the Act, is to require the Secretary to in writing advise *an* on-site operator of the safeguard. Once an otherwise valid safeguard has been issued to an operator at the mine, it is in effect at the mine and may be enforced against all on-site operators, including independent contractors providing services at the mine. Any other reading would endanger miners and lead to absurd results.

As a final matter, we have long recognized that operators are entitled to due process in the safeguard context. Like any other mandatory standard, a safeguard may not be enforced against a party that lacks fair notice of the safeguard’s requirements. *E.g.*, *Am. Coal Co.*, 34 FMSHRC 1963, 1967 (Aug. 2012); *Southern Ohio Coal Co.*, 7 FMSHRC 509, 512 (Apr. 1985) (“SOCCO”); *also, e.g., Mainline Rock and Ballast, Inc. v. Sec’y of Labor*, 693 F.3d 1181, 1187 (10th Cir. 2012); *Ideal Cement Co.*, 12 FMSHRC 2409, 2416 (Nov. 1990).

However, we emphasize that due process turns on the objective comprehensibility of the standard’s *requirements*, i.e., whether a reasonably prudent operator would understand what conduct is prohibited or required by the standard. *E.g.*, *Ideal Cement*, 12 FMSHRC at 2416; *SOCCO*, 7 FMSHRC at 512 (holding that safeguards must identify the relevant hazard and remedy with specificity). It does not turn on the *method* of notification, for example, whether a specific operator was notified in writing by the Secretary.⁷ If an operator understands or should

regulatory provision, in which the “operator” is limited to the “mine operator” (46 FMSHRC at 832-33), is inconsistent with the Mine Act. The initial written notice rendering a safeguard effective at a mine may be issued to any on-site operator.

⁷ GMS suggests that Congress included the written notice requirement in section 75.1403-1(b) to ensure due process, as a counterbalance to the Secretary’s unusual authority to issue mine-specific mandatory standards without notice-and-comment rulemaking. However,


understand what conduct is prohibited or required by a standard, due process has been met. Fair notice may be achieved through constructive notice of a safeguard's requirements. Further, it is significant in this case that GMS received actual notice of the contents of the safeguard from mine-specific training materials.

Applying the uncontested facts in this matter to the foregoing analysis, the citation must be affirmed. The parties have stipulated that if Safeguard No. 8202805 is valid and enforceable against GMS, Citation No. 8312039 can be affirmed as written. Jt. Stip. 23. The safeguard is valid, since the safeguard notice was issued in writing to the production-operator of Buchanan Mine #1, identifies the hazard and remedy, and fixed a time for the production-operator to comply. Jt. Stip. 10-11; Jt. Ex. 3. The safeguard is enforceable against GMS, since GMS was an independent contractor performing services at Buchanan Mine #1 and therefore an "operator" subject to any mandatory standards in effect at the mine when the citation was issued. Jt. Stips. 3, 13, 18-20. Finally, GMS had constructive notice of the safeguard, because Buchanan provided GMS with training materials that included the practice covered by the safeguard. Jt. Stips 15-16; 46 FMSHRC at 833.

III.

Conclusion

For the reasons above, we find that the prior Judge's nonbinding decision in *GMS Mine Repair & Maintenance, Inc.*, 42 FMSHRC 135 (Feb. 2020) (ALJ), does not have preclusive effect on the proceeding before us. We further hold that the Secretary was not required under section 75.1403-1(b) to provide separate written notice to GMS prior to enforcement, as the safeguard was properly issued in writing to the mine's prior production operator and GMS had constructive notice of the safeguard's requirements. Accordingly, Safeguard No. 8202805 is enforceable against GMS, and Citation No. 8312039 is affirmed as written.


Mary Lu Jordan, Commissioner


Timothy J. Baker, Commissioner

the Commission has already weighed the Secretary's broad grant of authority against operators' right to fair notice. We concluded that the proper counterbalance is to ensure that safeguards are narrowly tailored and identify the relevant hazard with specificity. *E.g.*, *SOCCO*, 7 FMSHRC at 512; *Am. Coal Co.*, 34 FMSHRC at 1967.

Chair Rajkovich, concurring:


I write separately solely with respect to the majority’s holding in Section I.B that Judges’ decisions cannot have preclusive effect. I otherwise fully concur with the majority.

The fundamental precept of issue preclusion is that “once an issue is actually and necessarily decided by a court of competent jurisdiction, that determination is conclusive” in any subsequent suits involving the same parties. *Montana v. U.S.*, 440 U.S. 147, 153 (1979) (quotation omitted). Preclusion “fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Id.* at 154. Once a final decision has been rendered on an issue, the parties should be able to trust that, *for those parties*, that issue is conclusively decided.

While Judges’ decisions do not have precedential effect, as *GMS* notes, *precedent* and *preclusion* are “conceptually distinct.” *GMS Reply Br.* at 2. A precedential judgment establishes a legal principle applicable to all future cases, while a preclusive judgment conclusively answers a specific question for specific parties. Multiple courts and agencies have found it appropriate to grant preclusive effect to nonprecedential decisions. *See, e.g., Pena v. Meissner*, 232 F.3d 896, n.1 (9th Cir. 2000) (citing CTA9 Rule 36-3); *Van Houten v. Sansone*, 152 Fed. Appx. 742, n.* (10th Cir. 2005) (citing 10th Cir. R. 36.3); *Hitchens v. Cnty. of Montgomery*, 98 Fed. App. 106, 112 (3d Cir. 2004); *The Permanente Med. Grp., Inc. & Nat’l Union of Healthcare Workers*, 372 NLRB No. 51 (Feb. 9, 2023).

Granting preclusive effect to a Judge’s decision would not force the Commission to broadly adopt that Judge’s holding as law, it would simply allow the prior decision to stand *as to those parties*, thus ensuring judicial consistency. Conversely, denying preclusive effect to Judges’ decisions could lead to an unworkable degree of inconsistency. Notably, Judges’ decisions are nonbinding on *other Judges* as well as on the Commission. If nonbinding decisions cannot have preclusive effect, then a party could “shop” the same question to multiple Judges, potentially resulting in two conclusive but contrary findings for the same parties on the same issue. While decisions by Commission Judges are *nonbinding*, they are unquestionably *final* unless appealed to the Commission. 30 C.F.R. § 823(d)(1).

I would find that a Judge’s decision that actually and necessarily decides an issue between two parties *may* have preclusive effect, subject to any of the usual exclusions or exceptions. As explained by the majority (slip op. at 4-5), some exclusions do apply here, therefore I concur with the majority in finding that the prior Judge’s decision does not have preclusive effect *in this instance*. I also fully concur with the majority’s analysis in Section II.



Marco M. Rajkovich, Jr., Chair

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