

SUBCHAPTER Q—PATTERN OF VIOLATIONS

PART 104—PATTERN OF VIOLATIONS

Sec.

104.1 Purpose and scope.

104.2 Initial screening.

104.3 Pattern criteria.

104.4 Issuance of notice.

104.5 Termination of notice.

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§ 104.1 Purpose and scope.

This part establishes the criteria and procedures for determining whether a mine operator has established a pattern of significant and substantial (S&S) violations at a mine. It implements section 104(e) of the Federal Mine Safety and Health Act of 1977 (Act) by addressing mines with an inspection history of recurrent S&S violations of mandatory safety or health standards that demonstrate a mine operator's disregard for the health and safety of miners. The purpose of the procedures in this part is the restoration of effective safe and healthful conditions at such mines.

§ 104.2 Initial screening.

At least once each year, MSHA shall review the compliance records of mines. MSHA's review shall include an examination of the following:

(a) The mine's history of—

(1) Significant and substantial violations;

(2) Section 104(b) of the Act closure orders resulting from significant and substantial violations; and

(3) Section 107(a) of the Act imminent danger orders.

(b) In addition to the compliance records listed in paragraph (a) of this section, the following shall also be considered as part of the initial screening:

(1) Enforcement measures, other than section 104(e) of the Act, which have been applied at the mine.

(2) Evidence of the mine operator's lack of good faith in correcting the problem that results in repeated S&S violations.

(3) An accident, injury, or illness record that demonstrates a serious safety or health management problem at the mine.

(4) Any mitigating circumstances.

(c) Only citations and orders issued after October 1, 1990, shall be considered as part of the initial screening.

§ 104.3 Pattern criteria.

(a) The criteria of this section shall be used to identify those mines with a potential pattern of violations. These criteria shall be applied only after initial screening conducted in accordance with § 104.2 of this part reveals that the operator may habitually allow the recurrence of violations of mandatory safety standards or health standards which significantly and substantially contribute to the cause and effect of mine safety or health hazards. These criteria are—

(1) A history of repeated significant and substantial violations of a particular standard;

(2) A history of repeated significant and substantial violations of standards related to the same hazard; or

(3) A history of repeated significant and substantial violations caused by unwarrantable failure to comply.

(b) Only citations and orders issued after October 1, 1990, and that have become final shall be used to identify mines with a potential pattern of violations under this section.

§ 104.4 Issuance of notice.

(a) When a potential pattern of violations is identified, the District Manager shall notify the mine operator in writing. A copy of the notification shall be provided to the representative of miners at the mine. The notification shall specify the basis for identifying the mine as having a potential pattern of violations and give the mine operator a reasonable opportunity, not to exceed 20 days from the date of notification, to take the following steps:

(1) Review all documents upon which the pattern of violations evaluation is based.

(2) Provide additional information.