

SUBCHAPTER Q—PATTERN OF VIOLATIONS

PART 104—PATTERN OF VIOLATIONS

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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.

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(3) Submit a written request for a conference with the District Manager. The District Manager shall hold any such conference within 10 days of a request. The representative of miners at the mine shall be provided an opportunity to participate in the conference.

(4) Institute a program to avoid repeated significant and substantial violations at the mine. The District Manager may allow an additional period, not to exceed 90 days, for determining whether the program effectively reduces the occurrence of significant and substantial violations at the mine. The representative of miners shall be provided an opportunity to discuss the program with the District Manager.

(b) If the District Manager continues to believe that a potential pattern of violations exists at the mine, a report of the evaluation made under this part shall be sent to the appropriate MSHA Administrator. This report shall be submitted no more than 120 days from the notification to the operator and miners' representative under paragraph (a) of this section. Alternatively, in cases where no program to reduce S&S violations has been implemented at the mine, the report shall be submitted no more than 60 days from such notification. A copy of the report shall be provided to the mine operator and the miners' representative 10 days before the report is sent to the Administrator. Both parties will have 10 days from receipt of the report to submit written comments to the Administrator.

(c) Within 30 days of receipt of a report from a District Manager, the Administrator shall issue a decision as to whether the mine is to be issued a notice of a pattern of violations. A copy of the decision shall be provided to the mine operator and the representative of the miners.

(d) The mine operator shall post all notifications issued under this part at the mine. A notice of a pattern of violations shall remain posted at the mine until such notice is terminated under §104.5 of this part.

§ 104.5 Termination of notice.

(a) Termination of a section 104(e)(1) of the Act pattern of violations notice shall occur when an inspection of the entire mine by MSHA finds no significant and substantial violations or if no withdrawal order is issued by MSHA in accordance with section 104(e)(1) of the Act within 90 days of the issuance of the pattern notice.

(b) The mine operator may request an inspection of the entire mine or portion of the mine. No advance notice of the inspection shall be provided, and the scope of inspection shall be determined by MSHA. Partial mine inspections covering the entire mine within 90 days shall constitute an inspection of the entire mine for the purposes of this part.

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