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SUBCHAPTER Q—PATTERN OF VIOLATIONS

PART 104—PATTERN OF VIOLATIONS

Sec.
104.1 Purpose and scope.
104.2 Pattern criteria.
104.3 Issuance of notice.
104.4 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 (Mine 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 Pattern criteria.

(a) At least once each year, MSHA will review the compliance and accident, injury, and illness records of mines to determine if any mines meet the pattern of violations criteria. MSHA's review to identify mines with a pattern of S&S violations will include:

(1) Citations for S&S violations;

(2) Orders under section 104(b) of the Mine Act for not abating S&S violations;

(3) Citations and withdrawal orders under section 104(d) of the Mine Act, resulting from the mine operator's unwarrantable failure to comply;

(4) Imminent danger orders under section 107(a) of the Mine Act;

(5) Orders under section 104(g) of the Mine Act requiring withdrawal of miners who have not received training and who MSHA declares to be a hazard to themselves and others;

(6) Enforcement measures, other than section 104(e) of the Mine Act, that have been applied at the mine;

(7) Other information that demonstrates a serious safety or health management problem at the mine, such as accident, injury, and illness records; and

(8) Mitigating circumstances.

(b) MSHA will post the specific pattern criteria on its Web site.

§ 104.3 Issuance of notice.

(a) When a mine has a pattern of violations, the District Manager will issue a pattern of violations notice to the mine operator that specifies the basis for the Agency's action. The District Manager will also provide a copy of this notice to the representative of miners.

(b) The mine operator shall post the pattern of violations notice issued under this part on the mine bulletin board. The pattern of violations notice shall remain posted at the mine until MSHA terminates it under §104.4 of this part.

(c) If MSHA finds any S&S violation within 90 days after issuance of the pattern notice, MSHA will issue an order for the withdrawal of all persons from the affected area, except those persons referred to in section 104(c) of the Mine Act, until the violation has been abated.

(d) If a withdrawal order is issued under paragraph (c) of this section, any subsequent S&S violation will result in a withdrawal order that will remain in effect until MSHA determines that the violation has been abated.

§ 104.4 Termination of notice.

(a) Termination of a section 104(e)(1) pattern of violations notice shall occur when an MSHA inspection of the entire mine finds no S&S violations or if MSHA does not issue a withdrawal order in accordance with section 104(e)(1) of the Mine Act within 90 days after the issuance of the pattern of violations notice.