

## PATTERN OF VIOLATIONS PROCEDURES SUMMARY

At least once each year, in accordance with 30 CFR Parts 104.2 and 104.3, the Office of Assessments will review the 24-month violation history of each operation under MSHA's jurisdiction to identify those that are exhibiting a potential Pattern of Violations. The Office of Assessments will document the criteria and data used to conduct the review.

The Office of Assessments will transmit by memorandum the list of mining operations identified as exhibiting a potential Pattern of Violations, along with the criteria and data used, to the Administrators for Coal and Metal and Nonmetal Mine Safety and Health. The Assistant Secretary, Deputy Assistant Secretaries, and Associate Solicitor for Mine Safety and Health will be copied in on the memorandum.

The memorandum will include: a list of all potential Pattern of Violations candidates, the criteria and data associated with the list, and the number, by standard, of repeated violations that became final orders of the Commission during the 24-month review period.

The Administrators will issue a memorandum to each District Manager who has a candidate(s) within the district with instructions for reviewing the designated operations and responding within seven days by identifying:

1. the operations that will be issued a notification of a potential Pattern of Violations and/or
2. the operations for which the District Manager recommends that no notification be issued.

The District Manager must provide a detailed justification when recommending that any mining operation be removed from further consideration. Information of which only local enforcement personnel would be aware, such as management changes and mitigating circumstances beyond the control of the operator can, and

should, be considered in making these recommendations. The Administrators will determine which of these mines will be issued a notification of potential Pattern of Violations and inform the District Manager of the decision.

The District Managers shall issue a written notification of potential Pattern of Violations to each operator ultimately identified to receive a notification of potential Pattern of Violations. A copy of the notification shall also be provided to the Assistant Secretary, Deputy Assistant Secretaries, Director of Assessments, Associate Solicitor for Mine Safety and Health, and the representative of the miners at the operation, where applicable. The notification shall specify the basis for identifying the operation as having a potential Pattern of Violations and give the operator a reasonable opportunity, not to exceed 20 days from the date of the notification, to take the following steps:

1. Review all documents upon which the pattern of violations evaluation is based and provide additional information;
2. Submit a written request for a conference with the District Manager (the District Manager shall hold any conference within 10 days of a request); and/or
3. Provide a written corrective action plan to institute a program to avoid repeated significant and substantial violations at the operation.

During the corrective action period, MSHA will conduct a complete inspection of the operation. It is preferable to conduct this complete inspection after the operator's plan has been implemented and the operator provided sufficient time to reduce significant and substantial violations. The complete inspection will be completed within 90 days from the date that the operator submitted the corrective action plan. When the mine operator does not implement a program to reduce S&S violations, MSHA will conduct a complete inspection within 60 days from the date of the issuance of the notification of potential Pattern of Violations. These inspections will also be counted as one of the required annual inspections for the

operations. The District Manager will analyze the results of this complete inspection and other on-site enforcement activities during the corrective action period to evaluate whether the mine operator has:

- reduced the violation frequency rate for S&S violations by 30%<sup>1</sup>

Or

- achieved a violation frequency rate for S&S violations that is at or below the industry average for this mine type and classification.<sup>2</sup>

Mines that achieve a 30% reduction in the S&S rate or that are at or below the industry average, will not be issued a pattern of violations notice. However, such mines will be considered along with all other mines in the following review cycle.

For any operations that have implemented a corrective action plan, but have failed to achieve the established violation frequency reduction rates, the District Manager will submit an evaluation report to the appropriate Administrator and the Director of Assessments no more than 120 days from the issuance of the potential pattern notification to the operator. In cases where no program to reduce S&S violations has been implemented at the operation, the District Manager will submit the evaluation report to the Administrator and the Director of Assessments no more than 60 days from the issuance of the potential pattern notification to the operator.

In the report, the District Manager should identify any circumstances that affected the operator's implementation of the corrective action plan, if applicable, and detail any factors that the Administrator

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<sup>1</sup> The 30% reduction is calculated from the baseline of the number of S&S citations/orders issued per 100 inspection hours during the 24-month baseline period.

<sup>2</sup> The number of S&S citations/orders issued per 100 inspection hours for all mines in the applicable mine type and classification during the 24-month baseline period is used as the target rate.

should consider in determining whether to issue a Notice of Pattern of Violations.

Regardless of whether the operator implemented a corrective action plan, a copy of the evaluation report shall be provided to the operator and representative of the miners, where applicable, 10 days before the report is sent to the Administrator and the Director of Assessments. Both the operator and miners' representative, where applicable, will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of a report from the District Manager to the Administrator, the Administrator will issue a decision as to whether the operation is to be issued a Notice of Pattern of Violations. A copy of the decision will be provided to the Assistant Secretary, Deputy Assistant Secretaries, Director of Assessments, the operator, the representative of the miners (where applicable), the District Manager, and the Associate Solicitor for Mine Safety and Health.

When the Administrator decides to issue a Notice of Pattern of Violations, the District Manager will send, by certified mail or hand delivery, the Notice of Pattern of Violations to the operator. A copy of the notice will also be provided to the representative of miners (where applicable), the Assistant Secretary, Deputy Assistant Secretaries, Director of Assessments, the Administrator, and the Associate Solicitor for Mine Safety and Health.

When the Administrator decides that the issuance of a Notice of Pattern of Violations is not justified, the Administrator will notify the Assistant Secretary, Deputy Assistant Secretaries, Director of Assessments, District Manager, and Associate Solicitor for Mine Safety and Health of this decision. The District Manager will notify the mine operator and the representative of miners (where applicable) of the decision.

Following notification to the operator of the issuance of a Notice of Pattern of Violations, the District Manager shall initiate appropriate

inspection activities to ensure that the operation is inspected in its entirety during the following 90-day period and each succeeding inspection cycle until the Pattern of Violations order is terminated.

If an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard during an inspection conducted while an operation is subject to a Notice of Pattern of Violations, the inspector shall issue an **order** requiring the operator to withdraw all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

#### **TERMINATION OF PATTERN OF VIOLATIONS NOTICE**

A Notice of Pattern of Violations shall be terminated when an inspection of the entire operation results in no withdrawal orders pursuant to Section 104 (e) (1) or Section 104 (e) (2) of the Act.

The operator may request an inspection of the entire operation or portions of the operation. No advance notice of the inspection shall be provided, and the scope of each inspection will be determined by MSHA. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Notice of Pattern of Violations.