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PROGRAM INFORMATION BULLETIN NO. P04-11

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SUBJECT: Assessments for an Excessive History of Violations

Scope

This bulletin applies to Mine Safety and Health Administration (MSHA) enforcement personnel, mine operators, and independent contractors performing work at mine sites.

Purpose

This bulletin reinforms the mining community of the 30 CFR, Part 100 excessive history of violations provision for civil penalty assessments.

Information

MSHA's civil penalty assessment regulations, in 30 CFR 100, contain a provision for assessing higher penalties to mine operators or to independent contractors with an excessive history of violations. Each time a violation is assessed, MSHA calculates the overall history of violations for the mine or the independent contractor. History is based on the total number of final violations during a preceding 24-month period with a 6-month delay factor included. The 24-month period used to calculate history begins 30 months prior to the date of the violation. For example, the period used for a violation cited in July 2004 would be January 2001 through December 2003. The 6 months immediately prior to the date of the violation are excluded in order to not count recent violations that may be under contest or otherwise not considered final.

History may account for a maximum of 20 penalty points, as described below. Any production operator or independent contractor who attains 20 penalty points for overall history is considered to have an excessive history of violations.

A production operator's violation history is calculated by dividing the number of assessed violations at that mine during the 24-month period by the number of MSHA inspection days during the same period. This calculation results in the number of violations per inspection day. Table VI in 30 CFR 100.3 shows the number of penalty points assigned based on the number of violations per inspection day. When the number of violations per inspection day is 2.1 or more (20 points), the mine is considered to have an excessive history of violations. However, any mine with 10 or fewer total violations in the 24-month period is exempt from the excessive history program.

An independent contractor's violation history is also calculated using a 24-month period. The total number of violations assessed at all mines, nationally, where the contractor performed work, is divided by two to obtain the average violations per year. Table VII in 30 CFR 100.3 shows the number of penalty points assigned based on the average violations assessed per year. When this average is 50 or more violations per year (20 points), the independent contractor is considered to have an excessive history of violations.

An excessive history of violations affects the amount of the penalty assessed for most 104(a) citations that are considered non-significant and non-substantial (non-S&S). Most 104(a) non-S&S citations receive a single penalty assessment (currently a flat \$60). However, when a 104(a) non-S&S citation is issued at a mine or to an independent contractor with an excessive history of violations, that citation is assessed by the regular formula method. The regular formula method currently results in a penalty of \$72 to \$60,000. Special assessments of 104(a) non-S&S citations issued at mines or to independent contractors with excessive history are also increased accordingly.

The history of violations status for a mine or an independent contractor can be monitored by reviewing the Proposed Assessment sheets. The overall history points for violations that have been assessed using the regular formula method can be found in the "History Points" column under Section B, "History of Previous Violations." The closer this number is to 20, the greater the concern should be for reaching excessive history.

Background

The current excessive history of violations regulation was implemented in 1992 to serve as an additional incentive towards compliance with regulations and to help reduce the number of violations at the affected mines, thereby providing increased health and safety for miners. Historically the percentage of mines having an excessive history of violations has been very small. However, there has been a recent significant increase in inquiries from all areas of the mining community about excessive history and the related penalties.

Authority

Code of Federal Regulations, Title 30, Part 100.

Issuing Office and Contact Person

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Internet Availability

This information bulletin may be viewed on the Internet by accessing MSHA's homepage (<http://www.msha.gov>) and then choosing "Rules & Regs" and "Compliance Assistance Information."

Distribution

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