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MSHA to start using pre-assessment conferencing procedures

ARLINGTON, Va. – The U.S. Department of Labor’s Mine Safety and Health Administration will begin implementing pre-assessment conferencing procedures in January 2012 to help reduce any backlog of future violations before the Federal Mine Safety and Health Review Commission. Under the procedures in most MSHA districts, a mine operator and miners’ representative may request a conference regarding a contested citation or order only after MSHA proposes a penalty assessment, and any settlements require approval by the commission. The new procedures are based on the results of a pilot program launched by MSHA Assistant Secretary Joseph A. Main in August 2010 that evaluated the effect of the pre-assessment conference on contested citations. The evaluation incorporated input from industry stakeholders, including mine operators and miners’ representatives.

“This new conferencing process will help reduce the backlog of cases that go before the commission by resolving disputes before litigation ever occurs,” said Main. “We are implementing a process that will provide early resolution of disputes, reduce the number of contested citations and orders, increase accuracy and consistency, and improve communication among mine operators, miners and MSHA.”

Each MSHA district must determine when to implement the procedures based on available resources. Implementation may occur slowly or not at all in some districts, until other backlog reduction strategies take hold and make the caseloads more manageable. During the pilot program, operators frequently opted not to request pre-assessment conferences, but there was a high resolution rate for those that did. “Although no single strategy will reduce the backlog of contested cases before the commission, this is one aspect of a larger plan, taking advantage of reduction opportunities where they can be found and implemented,” said Main.

Among the key findings in the evaluation of the pilot program (which can be found at <http://www.msha.gov/PreAssess/PreAssessConfEval2011.pdf>):

- Most contested violations did not go through the conference process.
- Most violations that went to conference were settled without a contest being filed.
- Ten mining companies accounted for more than half of all contested violations.
- Most mine operators surveyed stated that they felt comfortable in communicating concerns and expressed satisfaction with the conferencing procedures used during the pilot.
- Stakeholders expressed widespread support for the conference process.
- Additional resources will be needed to implement an agencywide conferencing program. Pilot districts estimated that while the actual conference took a short period of time, preparation for the conference could take as much as 1 to 2 hours per violation.

The number of contested proposed civil penalties increased dramatically between 2007 and 2010, creating a backlog of more than 89,000 citations awaiting adjudication by the Federal Mine Safety and Health Review Commission. The rise in contested violations has been attributed to the increase in penalty amounts and overall number of violations cited, the potential pattern of violations program and the replacement of pre-assessment conferences with post-assessment enhanced conferences. In the Supplemental Appropriations Act of 2010, Congress provided \$18.2 million to allow the Department of Labor to begin reducing the existing case backlog before the commission, and for other purposes related to mine safety. As of Sept. 30, the total number of citations in the backlog was down to approximately 69,000.

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