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**From:** feist@montanaming.org  
**Sent:** Tuesday, March 22, 2011 4:20 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** RIN 1219-AB73

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**Attachments:** Scanned letter to Health and Safety.pdf



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Health and S...

Attached please find the Montana Mining Association's comments.



# MONTANA MINING ASSOCIATION

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**March 10, 2011**

To: Mine Safety and Health Administration  
30 CFR 104  
RIN 1219-AB73  
Pattern of Violations

From: Montana Mining Association (Debbie Shea, Executive Director) 

RE: Comments

The Montana Mining Association Safety Committee would like to comment on MSHA proposing to revise the Agency's existing regulations for pattern of violations (POV).

First, the Agency has asked the Mining Industry to comment on a proposal which is lacking details on the criteria the Agency will use to enforce POV. Full and fair notice of what the criteria are should be made available prior to revising the POV.

Second, public hearings should be held to allow Industry to comment in a public forum with the Agency before revisions are made.

### Section 104.2

While the Agency would review a number of criteria listed under Section 104.2 to determine if an Operator meets the POV criteria, it is currently unknown what the criteria will be under this proposal. Again, we are unable to comment on criteria that have yet to be divulged.

The Agency is proposing to eliminate the existing requirements of 104.3(b) which requires that only citations and orders that have become final are to be used to identify mines with a pattern of violations. They believe the proposal to consider non-final citations and orders to identify mines with a POV is consistent with the Mine Act. The Agency uses the logic that there is a backlog in contested cases and it takes an average of 518 days for a contested violation to become final is sound reasoning to eliminate due process in the POV criteria. Serious citations are always written at the whim of a subjective opinion by an individual. The industry has a right to its day in court as the Mine Act intended before we are judged as guilty by the Agency. The Agency should consider methods to streamline the contesting process if that system functions poorly and not use it as tool to enforce POV.

The Agency believes Operators have an incentive to contest S&S violations to avoid being placed under a POV. Regardless if citations are contested, they all become finalized at some point and with the Agency's proposal to review a mine twice per year it is simply a matter of time before citations/orders are finalized and will be counted in the review. Under the current Part 100 penalty system, the Agency has installed a punitive method to punish mines for enacting their rights to contest citations by subjecting them to higher fines once a citation/order becomes final. The Agency has increased the percentage of S&S citations being issued nation wide, installed a punitive penalty for contesting citations, and now proposes to eliminate due process in the POV criteria.

### Section 104.3

Currently, the Potential Pattern of Violation (PPOV) provides mines with notification that they are approaching the POV and gives an opportunity for mines to work cooperatively with MSHA to reduce S&S citations before they are placed on a POV and subjected to closure orders for each S&S issued. Under the Agency's statistics, 56 of 62 (90%) who received a PPOV notice reduced their S&S violations by at least 30%. The Montana Mining Association Safety Committee believes MSHA should not eliminate a process that allows Mine Operators and the Agency to work cooperatively.