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To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB73

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These comments are directed to RIN 1219-AB73 Pattern of Violations

1. Although MSHA has listed pattern criteria that will be reviewed, there has been no publication of the specific criteria, i.e. the number of S&S citations, or the number in a certain period of time, or the number that have been marked fatal, etc. It is inappropriate to solicit comments on a program when that program has not been defined yet. MSHA is overreaching its authority when it proposes a law of such a vague nature. MSHA should establish the criteria in a more specific way and re-propose this rule and reopen a comment period.
2. MSHA needs to reinstate the requirement under Sec. 104.3(b) that only final orders and citation be used in determining POV status. To do otherwise is to eliminate the due process that protects citizens from the abusive power of the state. The proposed rule uses the backlog of cases as evidence that POV status would be hindered if only final orders were used in the criteria and MSHA has consistently blamed the backlog of cases on operators. In fact, the huge backlog has not always existed. MSHA has aided in creating this backlog by eliminating the conferencing process. MSHA has also trained instructors in Beckley to "check the highest degree of gravity so that there is room to negotiate later". MSHA inspectors have told operators "I don't know if it is correct or not, but you can conference it later". This arrogant, adversarial attitude does nothing to improve the health and safety of miners, it only creates more citations to be contested.
3. There is no mention of any system that would remove an operator from a POV status if citations or orders have been vacated or modified and the POV status is no longer valid. This is another reason that only final orders should be used. It would eliminate the false prosecution of operators.

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