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To: zzMSHA-Standards - Comments to Fed Reg Group

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MSHA

I would like to offer the following comments to the proposed changes to Pattern of Violations rules:

1. The proposed rule does not treat large mines or multi-section mines equitably with small mines. By basing part of the selection criteria on the number of S&S citations issued unfairly favors small mines or mines with smaller outby areas (less opportunity for citations). The same logic applies to repeated citations of the particular section of law or with the more severe citations. Larger and older mines, and mines with multiple units, offer increased opportunities for these citations. To be fair, the regulation should account for the differences in mines in all qualifying criteria.
2. The proposed rule inappropriately uses all citations, instead of ones that have become final. Many times, citations are issued in error (as proven thru the litigation process) and as MSHA continues to hire and train new inspectors, this problem will continue. The severity and negligence ratings are often proven to be issued in error thru the litigation process. Utilizing citations that are not final yet will place mines in the "pattern" status when ultimately they should not be in that status following litigation. With the "pattern" designation bringing very severe consequences, this improper designation may well dictate that the mine cease operations, when in fact some of the qualifying citations may ultimately be proven wrong.
3. Rather than use citations that are not yet final, I recommend re-establishing the local conference program where many disputed citations can be resolved.
4. I believe the current POV program works very well to put operators on notice when they are not compliant to the expected level. The biggest problem lies with the inability to contest improper citations, and this can be solved thru the local

conference process that existed for so many years. The local conferences not only worked out many improper citations, but it also served as a timely training tool for inspectors to educate them in the citation process.

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