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To: zzMSHA-Standards - Comments to Fed Reg Group

Subject: RIN 1219-AB73

Please find attached our comments on the proposed rule on Pattern of Violations.

Best regards,

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Barrick Gold of North America has reviewed the proposed modifications to 30 CFR 104, *Pattern of Violations* and offers these comments for incorporation into the official response from the Nevada Mining Association.

104.2 Initial Screening (Current rule)

The proposed rule deletes the mechanism of “initial screening” of an operator to determine if a potential POV exists. This initial step encourages the agency to methodically and carefully review the compliance history of the operator prior to entering into any formal action. The gravity and potential impact on the lives of miners and operators demands accuracy when considering POV sanctions. Removal of this step could potentially decrease accuracy resulting in unnecessary action on the part of the agency and the operator.

Proposed 104.2 Pattern Criteria

When linked with the proposal to eliminate the notice of approaching a POV, it becomes extremely critical that the criteria for determining a POV be clearly defined. Posting these criteria on the web and eliminating any notice of impending action places a greater burden on the operator especially the small mining company. Much like speed zones and speeding citations, the standard for compliance must be clearly stated in order for the citizen to know where the line is. At the very least, MSHA should publish this criteria prior to the issuance of any rulemaking to allow operators to participate in the process.

Proposed 104.2(a)(7)

Reference is made to clarification of MSHA’s intent to include “serious safety and health management” problems in the evaluation criteria. Unless the basis for this determination is clearly defined, it is too broad and subjective as written.

Continuing under the analysis of this section, MSHA states that operators approaching a POV may “proactively” submit a written plan to District Manager for “approval”. This approach is highly dependent on the operator knowing the status of his operation, based on clear and concise evaluation criteria and the timely availability of MSHA to act on this request.

Proposed 104.3(b)

The proposal to open up POV evaluation to all citations whether final or not, appears to run counter to the basis of our justice system of “innocent until proven guilty”. It appears that the assumption is made immediately upon issuance of the citation or order that the operator is clearly and unarguably in violation of a standard which may have grave consequences on the viability of the operation and the livelihood of many miners. The subjective nature of “significant & substantial” creates a point of contention in many cases even where a POV notice isn’t an issue. Consideration should be given to modifying the existing citation review system in order to improve consistency and accuracy in applying the POV provisions prior to making this change.

Proposed 104.8(b)

The current regulations state that “at least once each year, MSHA shall review compliance records of mines.” Modifying this requirement to a “semi-annual” minimum requirement does not seem to add any real value as this option already exists in the current standard.

Proposed 104.3(a)

As stated, the proposed rule eliminates the provision for providing any form of notice to the operator that problems are detected and therefore giving the operator an opportunity to take action in a proactive manner. In the section by section analysis, MSHA states that operators receiving the PPOV notice reduced their S&S citations by at least 30%. The analysis goes on to state that some operators receive more than one PPOV notice and that these operators fail to consistently control and reduce S&S violations. This information would indicate that the PPOV does work as a "notice" of poor performance. For operators failing to improve performance, we would suggest that an evaluation of the current system of issuing repeat PPOV notices needs to be completed and emphasis placed where it is needed and not spread across all operators.

The proposed changes to this section also eliminates the mandatory opportunity to request a conference with the District Manager in an effort to improve performance. It is anticipated that the agency would continue to encourage conferencing however with the removal of this mandate, MSHA may not be as open to accepting these requests in a timely fashion to avoid a POV notice. Proactive communications should be encouraged between all interested and affected parties.

Proposed 104.3(c)

The information stated in this proposed change is currently stated in the Act and is redundant in nature.