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Comment from anonymous anonymous, NA

Submitter Information

Name: anonymous anonymous

Organization: NA

General Comment

With regard to changes proposed to 100.3 (d) Negligence:

MSHA proposes to reduce the number of categories from 5 to 3, and include as one of the three the category of "No negligence".

it is my experience that an MSHA inspector never checks the "no negligence" category. Reducing the number of categories, and even slightly changing any definition attached to the no negligence category will not encourage inspectors to do so more in the future. The big words "Not negligent" or "No negligence" will create an impenetrable barrier to fair assessment, as an inspector is trained and encouraged that mine operators are always negligent to some degree. In fact, in some districts, mine inspectors are directed by their superiors to simply "start at high negligence, and let the operator argue you down". At that point, despite CLEAR definitions and instructions in the current part 100 language, inspectors simply ignore evidence and mitigating factors given, and stick by their assessment.

With only three categories to choose from, and one of those never being used, how soon before inspectors are told to "start with Reckless, and let the operator argue you down"?

Instead of the proposed three categories (and potential definitions), why not use Low

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Negligence, Moderate negligence, and High negligence? Give the inspectors a chance to check the lower box (low to no negligence), instead of binding their hands to negligent or higher.