October 24, 2006

Mine Safety and Health Administration
Office of Standards, Variance, and Regulations
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

Re: RIN 1219-AB51
Criteria and Procedures for Proposed Assessment of Civil Penalties

Dear Sir or Madam:

The National Mining Association (NMA) submits these comments in response to the Notice of Proposed Rulemaking (NOPR) issued by the Mine Safety and Health Administration (MSHA) on September 8, 2006 (71 FR 53054). We appreciate the opportunity to comment on the proposed regulations.

Summary

NMA's membership shares a common commitment to operate safe and healthy mines and facilities. Our most valued asset is our workforce, and we are well-served by assuring that every worker returns home to their family at the end of each working day. Safe mines are productive mines: safety and productivity are viewed in America's mining industry as complimentary, not competing, objectives.

These factors, not civil penalties, are the inducement for operators to be proactive and to take measures to prevent safety and health hazards. The mining industry's safety record bears this out. Between 1990 and 2005, both injuries and fatalities have steadily declined. This progress has all occurred under the existing civil penalty framework. See Attachment A. MSHA offers no analysis, and we are aware of none, that demonstrates that the proposed changes would result in fewer injuries or fatalities as compared to the existing framework. At bottom, the proposed changes introduce more subjectivity into the process that, in turn, will lead to more inconsistency in the assessment of penalties. Such a result, we submit, does not serve our workforce well.

Congress recently addressed civil penalties when it amended the Mine Act through the Mine Improvement and New Emergency Response (MINER) Act of 2006. Pub. L. 109-236, 120 Stat. 493 (June 15, 2006). The MINER Act increased the minimum penalties for certain violations and added new penalties for flagrant violations. MINER Act § 8, 120 Stat. 500-501. Congress has spoken. Everyone would be well served if MSHA abided by Congress' directive. Toward that end, we request that

MSHA abandon all aspects of this proposal that are not required by the MINER Act and proceed to implement the MINER Act civil penalty provisions as directed by Congress in a rulemaking that meets the December 30, 2006 deadline established in section 8(b) of the Act, 120 Stat. 501.

Basis and Purpose

The core premise of the proposal is that the existing penalty framework no longer serves as an adequate deterrent to violations of the Act. According to MSHA, eliminating the single penalty provision and generally increasing the amount of penalty assessments will provide a greater inducement for compliance. The only facts MSHA offers in support of the wholesale revisions of the civil penalty assessment provisions are that between 2003 and 2005 (1) the total number of violations have increased; (2) the number of all violations assessed penalties have increased; (3) the number of violations that received a regular assessment increased; and (4) the number of violations that received a special assessment increased.

These numbers do not tell the complete story. To begin with, the number of mines in all sectors has increased during this same period. According to MSHA's data (not mentioned in the proposal) between 2003-2005 the number of mines increased from 14,391 to 14,666. Average employment, including contractors, increased as well from 320,149 to 344,836. Putting aside the subjective variables inherent in the inspection and enforcement process, the increases in violations and penalties MSHA relies upon for this proposal appear commensurate with the increase in the number of mines subject to the Act.

Another important part of this story is the fact that under the current civil penalty framework total injuries and fatalities have steadily decreased. The injury and fatal injury rates have all decreased as well. The percentage of citations and orders considered significant and substantial (S&S) has remained the same. The dollar amount of penalties assessed has fluctuated up and down without any correlation with the number or rate of injuries and fatalities.

In the end, we are left with MSHA's hypothesis that substantial revisions to the existing penalty assessment formula will, apart from the MINER Act amendments, lead to greater compliance and safer mines. Facts and context are important. Often they pose an inconvenience to the preferred or predetermined result. This proposal is no exception. Together, and viewed in their proper context, the facts demonstrate the absence of any basis for wholesale revisions of the civil penalty assessment procedures.

The MINER Act

Congress revised the civil penalty provisions of the Mine Act when it enacted the MINER Act three months prior to the agency's proposed rule MINER Act § 8, 120 Stat. 500. Those revisions include establishing minimum penalties for violations of sections 104(d)(1) and (d)(2). The MINER Act also created new penalties for

flagrant violations. And Congress directed MSHA to promulgate rules implementing these new penalties no later than December 30, 2006. MINER Act § 8(b), 120 Stat. 501.

It is often said that it is presumed that Congress legislates with familiarity with the existing interpretation and practice of the law it is amending. Here, Congress addressed the civil penalty provisions of the Mine Act directly and altered those provisions it deemed in need of change or supplementation. It did not change the provisions that provide the statutory basis for the single penalty or the regular assessments MSHA now proposes to revise substantially. In short, Congress has spoken directly to those provisions that required change, and its silence with respect to the other civil penalty provisions is as equally audible in providing direction to the agency.

The MINER Act directs that MSHA implement the new civil penalty provisions in a rulemaking by the end of this year. Remarkably, notwithstanding Congress' directive, the new MINER Act civil penalties appear to be nothing more than an afterthought in the proposal. The agency sets forth that the proposal's purpose is to increase penalties proportionately to increases in operator size and history and negligence, gravity or seriousness of the violation. 71 FR at 53056. However, the existing regulations already accomplish that purpose. Moreover, the new MINER Act penalties are rooted in such factors as history, negligence, gravity and seriousness.

When the agency lists seven means to accomplish increased compliance, the implementation of the MINER Act is the last one mentioned. 71 FR at 53056. Nowhere does the agency attempt to examine whether the new MINER Act penalties would address the concerns the agency indicates motivate the proposal. It is as if the MINER Act amendments were plugged-in at the last moment as the proposal went out MSHA's doors to the Office of the Federal Register for publication.

Everyone, including MSHA, would be well served by the agency following the clear and unmistakable direction provided by Congress and limit the final rule to only those civil penalty provisions included in the MINER Act. To do otherwise will accomplish little more than unnecessarily punish those operators that strive each and every day to provide a safe and healthful work environment for their employees. As witnesses have testified at the public hearings, the issue is not whether higher penalties are in order, the issue is MSHA using the current tools it has available to induce improved safety performance by those few operators who exhibit disregard for the safety and health of their employees.

We recommend that MSHA convene an advisory committee to analyze those portions of the NOPR that extend beyond the new requirements of the MINER Act. The agency's failure to analyze the relationship between the issuance of citations and reductions in fatality and injury rates calls into question the premise upon which the NOPR was issued. Moreover, such an examination provides the opportunity to evaluate the economic issues, data supporting the assumption that

increased penalties drive safety performance and the effects of the penalty assessment process on improving safety and health. The agency should view this as an opportunity to bring together all stakeholders to examine the system and identify opportunities that address the root cause of reoccurring violations that pose the most serious threats to mine safety and health.

Specific Comments

We again request that MSHA abandon all aspects of the proposal that are not required under the MINER Act. We also offer the following commentary and views on the proposed revisions to the existing civil penalty assessment and procedure regulations.

I. Single Penalty Assessment (Part 100.4)

We oppose elimination of the "Single Penalty Assessment" for non-significant and substantial (non-S&S) violations. While some modification of the application of this provision may be in order, the proposal will result in, at a minimum, a 90 percent increase in the penalty for violations that have no reasonable likelihood to result in an injury. The elimination of the single penalty will have the effect of merely increasing bureaucracy and inefficiency because many of these violations, which have historically gone uncontested, will now be taken to conference and/or challenged before the Federal Mine Safety and Health Review Commission due to the potential for their inclusion not only in the mine's total history but also the new repeat violation history.

MSHA's inspection/citation history is replete with example after example of citations being issued for conditions that do not expose miners to a risk of injury or illness. The notion that violations for missing trash can lids, paperwork failures, faded labels or debris will now be assessed under the regular criteria and assessed, at a minimum $112, is counterproductive to the conduct of a successful safety program. The unintended result of this change will be to divert attention from conditions that truly present the potential for serious injury while operators struggle to prevent violations that are *de minimis* in nature. We urge the agency to retain the single penalty assessment provisions.

We find the agency's reasoning for eliminating the single penalty provision unavailing. According to the agency, elimination of the single penalty provision "reflects a more appropriate and effective approach to achieving the congressional purpose with respect to civil monetary penalties." 71 FR at 53056. But the agency never explains why.

Later, MSHA opines that the elimination of the single penalty provision "will cause operators to focus their attention on preventing all hazardous conditions." 71 FR at 53063. We do not follow the agency's reasoning. By definition, single penalty assessments are for violations that are not likely to result in a serious injury. 30 CFR § 100.4(a). The purpose of the single penalty assessment, according to MSHA, is "to permit the mining community to focus its resources on violations that have

the greatest impact on miner safety and health." 47 FR 22,292 (May 21, 1982). Now the agency appears to eschew any priorities or distinctions as it relates to the most critical and hazardous of mine conditions. But, this is precisely what an independent review of the agency program revealed was needed to improve the effectiveness and efficiency of the enforcement program. See ICF Consulting, *Mine Inspection Program Evaluation*, p 1-1 (September, 30, 2003).

Because, by their very nature, the types of violations subject to the single penalty assessment are not reasonably likely to cause serious harm, and they must be timely abated, "even successful deterrence of these violations will not significantly reduce a miner's risk of serious illness or injury." *Coal Employment Project v. Dole*, 889 F. 2d 1127, 1134 (D.C. Cir. 1989). Before the agency abandons a core element of the civil penalty program, one that has been upheld by the courts as in keeping with the purposes of the Act, see, *Coal Employment Project*, supra, the agency needs to better explain why the mining community is now better served by a system that will require everyone to "spend disproportionate amounts of time [and resources on] violations whose impact on safety and health is minimal." 47 FR at 22,292.

II. Regular Assessment Criteria (§100.3)

Revisions to this part of the existing Part 100 regulations represent the most significant portion of the proposed changes and will dramatically increase the penalty assessments. These are discussed individually below.

The proposed changes are premised on the unsupported premise that operator behavior is driven by a desire to avoid civil penalties rather than by their desire to return employees home safely and to operate the most productive mines, which also happen to be the safest mines. Some of the changes would blur or eliminate the distinction between non-serious and significant and substantial violations with the result causing operators to focus inordinate resources on conditions that pose little or no potential to cause serious injury or illness.

a. Violation History

The changes proposed by the NOPR are two-fold: first, a reduction from 24 to 15 months of the review period when analyzing an operator's history of total violations; and second, the addition of a new history criterion, repeat violations of the same standard.

A reduction in the time period used to evaluate an operator's history of the violation from the previous 24 months to 15 months has merit in view of the regular and frequent inspections for mines. The violations considered should include only those citations/orders that have been finally adjudicated. However, we recommend that in view of the inspection frequency under the Mine Act (quarterly for each underground mine and bi-annually for each surface mine), the period for analyzing an operator's historic trend of total violations should be established as 12 months.

Such an approach would more easily allow the evaluation period to be divided into quarterly or bi-annual period for analysis purposes.

The second and more significant change is the agency's proposed inclusion in an operator's history of repeat violations of the same standard. As proposed, this would be additive to the total violation history component applied under existing Part 100.3(c) and would result in double-counting of violations. The agency does not provide any reasoning for such a punitive process. This change should not be adopted.

The proposed change also ignores the subjectivity and ambiguity inherent in the rules and the manner in which they are applied. It is unfortunate that the agency refuses to recognize, after more than 35 years of experience under the law, that many of the standards upon which violations are premised are entirely subjective. Far too often we find inspectors applying different interpretations of the regulation with citations being issued for identical conditions in one instance, while not in another. Additionally, the broad generic requirements of many of the standards can be applied to multiple conditions that are, in reality, quite different. These conditions do not infer "an attitude which has little regard for getting to the root cause of violations of safe and healthful working conditions" as the agency suggests in the proposal. Rather, they are illustrative of the broad and ambiguous nature of the underlying regulations.

We believe it is premature to consider the addition of this element until the agency is able to ensure consistency in the inspection process and clarity in the underlying regulations. District variations in what constitutes an "accumulation" or when a guard is deficient must be resolved before the agency subjects operators to increasingly higher penalties where the computation is made based on an individual's subjective determination.

If the agency decides to include this element in the determination of an operator's history, we strongly encourage that it apply, as it does for history of all violations, on a violation-per-inspector-day criteria. Similarly, we recommend that only S&S violations be considered in determining repeat violations of the same standard. The failure to do this will effectively eliminate the distinction between S&S and non-S&S citations. Lastly, if the agency persists in including repeat violations, we recommend that it be applied prospectively, beginning with the next complete inspection following publication of the final rule.

In each category of mining, but especially in underground coal, MSHA issues citations and orders for a disproportionate number of violations of one or two standards. In coal, over 12 percent of the violations are of 30 C.F.R. §75.400. That standard does not set out any criteria for what constitutes a hazardous accumulation of coal. Unfortunately, these citations occur everywhere in a mine—in the face, in roadways, along conveyor belts and in return airways. The use of a repeated criteria for such a vague standard that can cover a myriad of situations arbitrarily lumps together different areas of the mine and different violation scenarios.

This is even better illustrated by the metal/nonmetal safe access standard, 30 C.F.R. § 57.11001, one of the most frequently cited standards. The repeated history would treat this sort of citation with the same weight as one that might address a serious condition of access.

The fact that the repeated category is not limited to S&S violations is extremely problematic. The thrust of this change, as well as other changes such as elimination of the single penalty, appears to have virtually eliminated the significance of an S&S finding, contrary to the intent of the Act.

b. Operator Size

The agency should place less emphasis on an operator's size and more emphasis on what the operator is doing to constructively improve health and safety conditions. To accomplish this purpose, MSHA would need to reduce the proposed 20 penalty points assigned for an operator's size to a more reasonable number. MSHA should consider reducing the number of size categories (in Tables III-1-2-3) to six categories. With the exception of the size category for the smallest operators, one penalty point should be assigned for each of the other five (5) categories. A maximum of five (5) penalty points should be assigned to the largest operators.

Instead of focusing on an operator's size, we encourage the agency to focus on what an operation is actually doing to reduce citations and injuries. An operator should receive a penalty point reduction if it engages in proactive efforts to improve heath and safety conditions for miners.

MSHA has asked for comments concerning the weight that should be assigned in the penalty scheme to the size of a controlling entity. The Act is very specific; it is the size of the operator, not some other entity up the corporate chain, that is to be considered in calculating the size of the penalty. The existing system itself is contrary to law because of the use of the size of a controlling entity as a factor in calculating the penalty. No new system should include that factor in any fashion.

III. Conferences

The Proposed Rule will shorten the period for an operator or miners' representative to request a conference. The purported basis for this is that it will expedite the penalty proposal process. This view is without foundation. The delay in the process occurs not in the request for a conference but after the request. In many districts, conferences are not held for as many as five to six months after a request for conference. Further, there are substantial delays in the assessment of penalties, sometimes over a year for special assessments. The reduction of the time period for requesting a conference serves no purpose other than to cut off some operators and miners' representatives from having a conference. The 10-day period to request a conference must be retained.

We agree with MSHA's statement that "safety and health is improved when mine operators are afforded an opportunity to discuss safety and health issues after an inspection with the MSHA District Manager." 71 FR at 53063. However, we do not understand why then the agency continues to leave to its discretion whether to provide such opportunity when an operator requests a conference. Conferences should be granted upon request by the operator unless the agency determines and documents that the request is frivolous.

IV. Special Assessment Criteria

Proposed § 100.5 would eliminate the eight categories of violations that will automatically be reviewed for possible special assessment under 100.5(b). The agency contends that this will provide flexibility in lieu of the mandatory determination of what violations should be considered under 100.5(b). We remain skeptical of the agency's claim that the proposed revisions to this section should result in a reduction of special assessments by approximately 83 percent (see comments of Robert Stone, Salt Lake City hearing transcript, page 32).

The majority of violations should be assessed by the regular assessment formula. Special assessments should be applied to only a small category of violations such as "flagrant" violations as defined by the MINER Act. Further, the "discretionary" use of special assessments should be eliminated. The existing list of eight categories where special assessments are permitted should be retained.

V. Economic Analysis of Proposed Rule

The Preliminary Regulatory Economic Analysis (PREA) lacks proper documentation to evaluate the agency's conclusions on the economic impact of the rule on the industry. Despite an incomplete discussion of its analytical approach, the agency concludes that "were the proposed rule in effect in 2005, total violations would have declined … a reduction of about 19% in the total number of violations," 71 FR at 53069. The limited information provided by MSHA makes it impossible to evaluate the agency's conclusion regarding the proposal and its relationship on operator compliance. Again, nowhere does the agency evaluate the existing history of decreasing injuries, fatalities and how those trends relate to civil penalty assessments under the existing program that has been in place for almost two decades.

The agency has substantially underestimated the financial implications of the NOPR. The agency has concluded that the NOPR will increase total civil penalties, "assuming no compliance response, from $29.9 million to $68.5 million, an increase of $43.7 million, or 176%." 71 FR at 53067. As reflected in Attachment B, calculations of actual penalties received at NMA member company mines indicate that the civil penalties will be many magnitudes higher than the agency predicts.

A detailed analysis of the citations issued in 2005 to ascertain the financial impact of the proposed changes in individual assessments amounts would be the best way

to analyze the proposed changes and how they might influence compliance. But to the extent such an approach would overwhelm the agency, a feasible alternative would be for the agency to conduct a random sampling survey of citations issued across the agency coal and metal/nonmetal districts applying the new criteria to previously assessed violations. Only in this way can the agency estimate the total financial impact, barring increased compliance response.

Conclusion

The agency should withdraw all aspects of the proposal which are not required to implement the MINER Act's new civil penalty provisions. The agency has failed to provide any persuasive reasons for the major revisions proposed for its civil penalty program. Nor has the agency explained why the MINER Act amendments passed by Congress just three months prior to publication of this proposal are inadequate to the task of accomplishing the purposes set forth in this rule. Indeed, it does not even appear that MSHA has fully evaluated the MINER Act civil penalty amendments and how they might have an affect upon operator compliance. Rather, it appears that MSHA merely plugged-in the MINER Act provisions at the last moment. Additional changes to the civil penalties beyond those provided for explicitly by Congress three months ago deserve more thoughtful deliberation.

Sincerely,

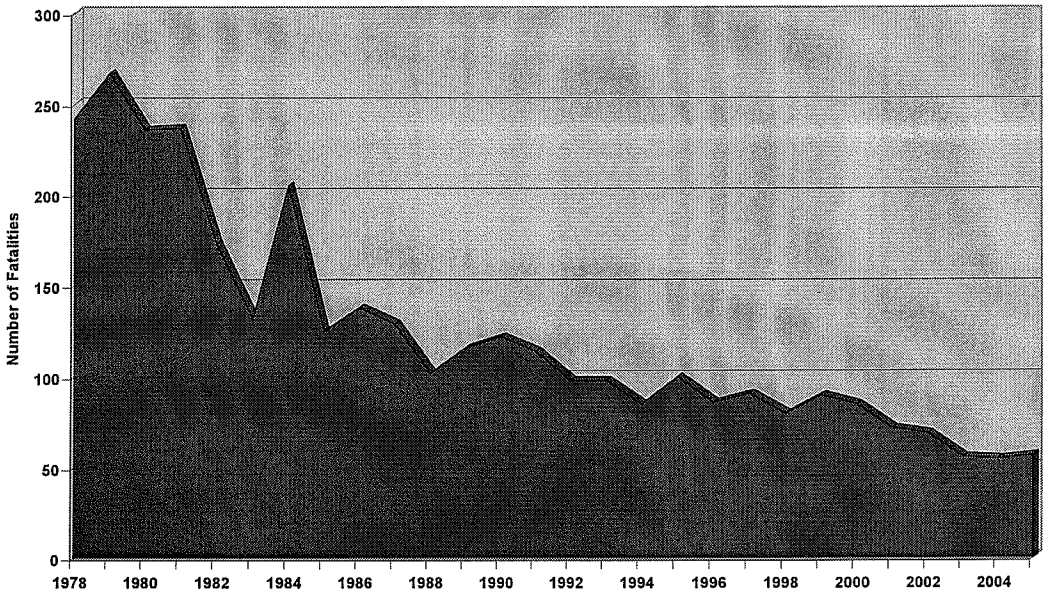
Bruce Watzman
Vice President
Safety, Health & Human Resources

Mine Safety and Health At a Glance

U.S. Department of Labor
Mine Safety and Health Administration

Safety and health in America's mining industry made significant strides during the 20th century and over the last 25 years in particular. In 1978, the first year the Mine Safety and Health Administration (MSHA) operated under the new Mine Safety and Health Act of 1977, 242 miners died in mining accidents. Last year, in 2005, 57 fatalities were reported MSHA's culture of prevention embeds safety and health as core values in all initiatives and ongoing activities. Inspectors are trained to direct their efforts to those areas or activities that are most likely to place miners at risk. Strong enforcement is supplemented by helping mine operators understand the law and how to comply with the law's requirements. MSHA's technical support program applies scientific and engineering solutions to mitigate hazards. Education and training for the mining industry is crucial to the reduction of accidents and illnesses. MSHA ensures that its training specialists and technical support personnel are readily accessible to the mining industry.

U.S. Mining Fatalities 1978 - 2005



All Mine Safety and Health

	1995	2000	2001	2002	2003	2004	2005
Number of mines	13,859	14,413	14,623	14,520	14,391	14,478	14,666
Number of miners	361,647	348,548	347,228	329,114	320,149	329,008	344,837
Fatalities	100	85	72	69	56	55	57
Fatal injury rate	.0303	.0272	.0232	.0237	.0197	.0184	.0180
All Injury rate	6.30	5.13	4.75	4.60	4.23	4.05	3.92
Coal production (millions of tons)	1,030	1,078	1,128	1,094	1,071	1,111	1,133
Total mining area inspection hours/mine	56	57	53	51	52	54	50
Hazard complaints	632	968	1,014	1,042	956	1,149	1,324
Citations and orders	123,147	120,269	126,575	105,766	110,038	121,246	128,225
S&S citations and orders (%)	42%	36%	34%	32%	32%	33%	32%
Dollar amount assessed (Millions)	25.1	24.7	21.3	21.9	19.3	26.8	23.9

Coal Mine Safety and Health

U.S. Coal mine production reached the highest levels in history in recent years. In 2005 coal mining fatalities reached a record low level 22. Even with the recent high production, MSHA's accident reduction efforts helped to keep the annual fatality totals more than 50% lower in recent years compared with totals recorded in the early 1990s.

	1995	2000	2001	2002	2003	2004	2005
Number of coal mines	2,946	2,124	2,144	2,065	1,972	2,011	2,063
Number of miners	132,111	108,098	114,458	110,966	104,824	108,734	116,436
Fatalities	47	38	42	27	30	28	22
Fatal injury rate	.0398	.0393	.0402	.0270	.0312	.0273	.0196
All Injury rate	8.22	6.64	6.03	6.03	5.38	5.00	4.62
States with coal mining	26	26	26	26	26	26	26
Coal production (millions of tons)	1,030	1,078	1,128	1,094	1,071	1,111	1,133
Total mining area inspection hours/mine	153	178	184	177	179	180	176
FY Inspection completion rate (%)	95.6	98.4	98.4	98.5	98.5	98.9	99.6
Hazard complaints	332	300	295	363	345	401	501
Citations and orders	82,121	58,394	68,307	57,264	56,883	64,581	69,124
S&S citations and orders (%)	49%	42%	40%	38%	39%	41%	39%
Dollar amount assessed (Millions)	18.4	12.0	11.4	13.0	11.3	17.0	14.4

Metal and Nonmetal Mine Safety and Health

Metal and nonmetal mining includes production of metals such as gold and copper, nonmetals such as salt and phosphate, and production of stone, sand and gravel. Mining techniques and conditions are diverse and differ substantially from the coal sector. Most metal and nonmetal operations are small. MSHA has focused on small mines and formed partnerships to aid in accident reduction.

	1995	2000	2001	2002	2003	2004	2005
Number of metal/nonmetal mines	10,913	12,289	12,479	12,455	12,419	12,467	12,603
Number of miners	229,536	240,450	232,770	218,148	215,325	220,274	228,401
Fatalities	53	47	30	42	26	27	35
Fatal injury rate	.0250	.0218	.0146	.0220	.0138	.0137	.0170
All Injury rate	5.24	4.45	4.10	3.86	3.65	3.55	3.54
States with M/NM mining	50	50	50	50	50	50	50
Total mining area inspection hours/mine	25	28	25	25	27	27	23
FY Inspection completion rate (%)	97.6	73.7	75.3	87.6	87.4	90.2	87.7
Hazard complaints	300	668	719	679	611	748	823
Citations and orders	41,026	61,875	58,268	48,502	53,155	56,665	59,101
S&S citations and orders (%)	28%	31%	27%	26%	24%	24%	23%
Dollar amount assessed (Millions)	6.7	12.7	9.9	8.9	8.0	9.8	9.5

* All reported injuries per 200,000 employee hours

** Total Mining Area Time includes: On-site Inspection Time (M/NM), MMU Pit Time (Coal), Outby Area Time (Coal), Surface Area Time (Coal), Citation/Order writing On-Site

For more information:

www.msha.gov

MSHA Office of Program Education and Outreach Services, (202) 693-9400

Bruce, below is a comparison between the current MSHA criteria for penalty determination and the proposed new system, using a typical 104(A) S&S citation, issued for violation of 75.400 for perceived accumulations of combustible materials (many times a subjective determination by the inspector). This example is for a coal mine with 4 producing units and approximately 30,000' of conveyor belt line.

	Old System Points
New System Size 18} 1.1 to 2 million annual tons	9
Controlling Entity 5} Over 10 million annual tons	5
Violation History 2} 0.3 - 0.5 citations/inspection day	2
Repeat Violations 20} Using 21 citations issued over a 15-month period	N/A
Negligence 20} Moderate Negligence	15
Likelihood 30} Reasonably Likely	5
Severity 5} Lost Workdays or Restricted Duty	3
Persons Affected 2} 2 miners potentially exposed	2
Reduction 10%	30%
Total Points 102	41
Current Proposed Assessment = $248	$354 minus 30% for Good Faith
New Assessment Criteria = $2,901	$3,224 minus 10% for Good Faith

The same typical 104(A) S&S citation would be nearly 11.7 times the old penalty, possibly for what one inspector would consider a "spill", that another considers "accumulations".

104 A (S&S)	Value used in calculation	Existing Penalty Points	Proposed Penalty Points
Tonnage	0ver 2 million	10	20
Violations Per Inspection Day	0.7-0.9	6	6
Repeat Violation in 15 months	9	0	4
Negligence	**Moderate**	15	20
Liklihood	**Reasonably**	5	30
Severity	**Fatal**	10	20
Persons Affected	**1**	1	1
Point Total		**47**	101
Cost		$536	$2,976

104 A (Non-S&S)		Existing Penalty Points	Proposed Penalty Points
Tonnage	Over 2 million	10	20
Violations Per Inspection Day	0.7-0.9	6	6
Repeat Violation in 15 months	Over 20	0	20
Negligence	**Moderate**	15	20
Liklihood	**Unlikely**	2	10
Severity	**No Lost Days**	0	0
Persons Affected	**1**	1	1
Point Total		**34**	77
Cost		$60	$436

104 A (S&S)		Existing Penalty Points	Proposed Penalty Points
Tonnage	Over 2 million	10	20
Violations Per Inspection Day	0.7-0.9	6	6
Repeat Violation in 15 months	Over 20	0	20
Negligence	**Moderate**	15	20
Liklihood	**Reasonably**	5	30
Severity	**Lost Work Day**	3	5
Persons Affected	**1**	1	1
Point Total		**40**	102
Cost		$327	$3,224

Average Cost	$138(Aug. YTD)
Number of citations YTD	343 (Aug. YTD)

104 A	Value used in calculation	Existing Penalty Points	Proposed Penalty Points
Tonnage	>2 million	10	20
Violations Per Inspection Day	1.1 to 1.3	10	10
Repeat Violation in 15 months	> 20	0	20
Negligence	**moderate**	15	20
Liklihood	**reasonably likely**	5	30
Severity	**lost workdays**	3	5
Persons Affected	**2**	2	2
Point Total		45	107
Cost		$463.00	$4,810.00

104 A	Value used in calculation	Existing Penalty Points	Proposed Penalty Points
Tonnage	>2 million	10	20
Violations Per Inspection Day	1.1 to 1.3	10	10
Repeat Violation in 15 months	> 20	0	20
Negligence	**moderate**	15	20
Liklihood	**reasonably likely**	5	30
Severity	**lost workdays**	3	5
Persons Affected	**1**	1	1
Point Total		44	106
Cost		$437.00	$4,440.00

104 A	Value used in calculation	Existing Penalty Points	Proposed Penalty Points
Tonnage	>2 million	10	20
Violations Per Inspection Day	1.1 to 1.3	10	10
Repeat Violation in 15 months	> 20	0	20
Negligence	**moderate**	15	20
Liklihood	**reasonably likely**	5	30
Severity	**lost workdays**	3	5
Persons Affected	**1**	1	1
Point Total		44	106
Cost		$437.00	$4,440.00
Average Cost		$445.00	$4,563.00
Number of citations YTD	474		

104 A	Value used in calculation	Existing Penalty Points	Proposed Penalty Points
Tonnage	800,000 to 1 M	8	16
Violations Per Inspection Day	1.1 to 1.3	10	10
Repeat Violation in 15 months	9	0	4
Negligence	**Moderate**	15	20
Liklihood	**Reasonably**	5	30
Severity	**lost days**	3	5
Persons Affected	**1**	1	1
Point Total		**42**	**86**
Cost		**383**	**897**

104 A		Existing Penalty Points	Proposed Penalty Points
Tonnage	800,000 to 1 M	8	16
Violations Per Inspection Day	1.1 to 1.3	10	10
Repeat Violation in 15 months	9	0	4
Negligence	**Moderate**	5	20
Liklihood	**Reasonably**	3	30
Severity	**Fatal**	10	20
Persons Affected	**1**	1	1
Point Total		**37**	**101**
Cost		**273**	**2,976**

104 A		Existing Penalty Points	Proposed Penalty Points
Tonnage	800,000 to 1 M	8	16
Violations Per Inspection Day	1.1 to 1.3	10	10
Repeat Violation in 15 months	9	0	4
Negligence	**Moderate**	5	20
Liklihood	**Reasonably**	3	30
Severity	**Permanent**	7	10
Persons Affected	**1**	1	1
Point Total		**34**	**91**
Cost		**221**	**1,337**

Average Cost		292.33	1736.67
Number of citations YTD	305		

"Garden Variety" S&S Under 75.400

Point Category	Current	Proposed
Mine Size	9	18
Controlling Entity	4	4
Viol Hist	8	8
Repeat Viols	-	20
Negligence	15	20
Likelihood	5	30
Severity	3	5
Persons Affd	1	1
Point Total	45	106
Raw Penalty	$463	$4,440
Discounted Penalty	$324	$3,996

Non-S&S Under 75.400

Point Category	Current	Proposed 1
Mine Size	9	18
Controlling Entity	4	4
Viol Hist	8	8
Repeat Viols	-	20
Negligence	15	20
Likelihood	2	10
Severity	3	5
Persons Affd	1	1
Point Total	-	86
Raw Penalty	$ 60	$897
Discounted Penalty	$ 60	$807

Notes:

1. The points assigned for "controlling entity" is currently an open issue, and is assumed to be unchanged here.
2. The points for "repeat violations" is assumed to be maximized here because the mine at issue always has more than twenty 75.400s in any 15-month period, regardless of whether the "S&S" or "non-S&S" designation is used as a basis for the points calculation.
3. The issue of whether to assess repeat violation points for non-S&S citations is not specifically addressed in the proposed rule, so the points are included in this example. If repeat violation points are not assigned to non-S&S citations, the citation would be reduced to $162.