

Issues of Concern to Mining Industries Regarding the MSHA Pattern of Violations (POV) Proposal

- Having “issued citations” rather than “final orders” count towards POV status. Using the Mine Safety and Health Administration’s currently posted POV criteria procedures, the total number of facilities and mines identified as POV violators may potentially climb to a significant percentage of total operations. Of approximately 14,100 MSHA- regulated operations, several hundred could receive a POV closure order due to the “issued citations” change in the standard.
- Withholding the actual POV criteria for future posting. In issuing the proposal without the actual POV criteria, MSHA prevents both the analysis of the rule’s impact to mining as well as any meaningful opportunity to comment on the proposal.
- The proposal significantly underestimates the costs of the rule. MSHA’s cost estimates, including database review, safety and health management plans, lost revenue, etc, do not account for the true costs of the proposal. Once fully implemented, the real cost of the proposal could be more than \$193M annually by our analysis.

Direct Costs of Compliance with the Pattern of Violations Proposal (All figures in millions of dollars)

Compliance Costs Provision	Small Mines	Medium and Large Mines	All Mines Total
Compliance Monitoring Using MSHA Searchable Database	1.9	15.4	17.3 ¹
Developing Safety and Health Management Plans			53.6 ²
Lost Revenue			122.9 ³
Total Costs			\$193.8M

- The indirect costs of compliance are not detailed in the proposal. These costs include wages paid to miners for shutdowns, depreciation and amortization expenses, electricity and other utility consumption, mineral royalties, payments into pension funds, etc. Also, for operations that are shut down for a longer period of time than the Mine Act requires operators to pay miners, then the miners incur wage losses as well.
- Implementing, maintaining and evaluating the effectiveness of the searchable database require significant resources. The POV proposal requires the database to be timely and accurately maintained so that operators are aware of the most current compliance status; otherwise, unwarranted facility shutdowns will occur.

¹ All supervisory wages are based on \$65.05/hour. All miners’ wages are based on \$35.30/hour. The small mines total is calculated by using .5 hours/week to monitor compliance. Medium and large mines’ monitoring rates are based on 2 hours/week.

² Twenty percent of 14,100 operations (2,820) may have to implement plans at a cost of \$19,000/operation. The discrepancy with the \$22,100 figure cited in the proposal is due to using a supervisory wage of \$65.05 instead of the coal supervisor wage of \$84.70. Twenty percent is an assumption based on facility inspection summaries for calendar year 2011.

³ Twenty percent of 2,820 (564) operations may receive at POV notice due to removing the final order provision. Total revenue loss is based on MSHA figure of \$218,000/operation. Twenty percent is based on MSHA’s assumptions in the proposed rule.