

SUBCHAPTER P—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

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§ 100.1 Scope and purpose.

This part provides the criteria and procedures for proposing civil penalties under sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations, to maximize the incentives for mine operators to prevent and correct hazardous conditions, and to assure the prompt and efficient processing and collection of penalties.

§ 100.2 Applicability.

The criteria and procedures in this part are applicable to all proposed assessments of civil penalties for violations of the Mine Act and the standards and regulations promulgated pursuant to the Mine Act, as amended. MSHA shall review each citation and order and shall make proposed assessments of civil penalties.

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* (1) Except as provided in § 100.5(e), the operator of any mine in which a violation occurs of a mandatory health or safety standard or who

violates any other provision of the Mine Act, as amended, shall be assessed a civil penalty of not more than \$60,000. Each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. The amount of the proposed civil penalty shall be based on the criteria set forth in sections 105(b) and 110(i) of the Mine Act. These criteria are:

- (i) The appropriateness of the penalty to the size of the business of the operator charged;
- (ii) The operator's history of previous violations;
- (iii) Whether the operator was negligent;
- (iv) The gravity of the violation;
- (v) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and
- (vi) The effect of the penalty on the operator's ability to continue in business.

(2) A regular assessment is determined by first assigning the appropriate number of penalty points to the violation by using the appropriate criteria and tables set forth in this section. The total number of penalty points will then be converted into a dollar amount under the penalty conversion table in paragraph (g) of this section. The penalty amount will be adjusted for demonstrated good faith in accordance with paragraph (f) of this section.

(b) *The appropriateness of the penalty to the size of the business of the operator charged.* The appropriateness of the penalty to the size of the mine operator's business is calculated by using both the size of the mine cited and the size of the mine's controlling entity. The size of coal mines and their controlling entities is measured by coal production. The size of metal and nonmetal mines and their controlling entities is measured by hours worked. The size of independent contractors is measured by the total hours worked at all mines. Penalty points for size are assigned based on Tables I to V. As used in these tables, the terms "annual

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tonnage” and “annual hours worked” mean coal produced and hours worked in the previous calendar year. In cases where a full year of data is not avail-

able, the coal produced or hours worked is prorated to an annual basis. This criterion accounts for a maximum of 25 penalty points.

Table I—Size of Coal Mine

Annual tonnage of mine	Penalty Points
0 to 7,500	1
Over 7,500 to 10,000	2
Over 10,000 to 15,000	3
Over 15,000 to 20,000	4
Over 20,000 to 30,000	5
Over 30,000 to 50,000	6
Over 50,000 to 70,000	7
Over 70,000 to 100,000	8
Over 100,000 to 200,000	9
Over 200,000 to 300,000	10
Over 300,000 to 500,000	11
Over 500,000 to 700,000	12
Over 700,000 to 1,000,000	13
Over 1,000,000 to 2,000,000	14
Over 2,000,000	15

Table II—Size of Controlling Entity—Coal Mine

Annual tonnage	Penalty Points
0 to 50,000	1
Over 50,000 to 100,000	2
Over 100,000 to 200,000	3
Over 200,000 to 300,000	4
Over 300,000 to 500,000	5
Over 500,000 to 700,000	6
Over 700,000 to 1,000,000	7
Over 1,000,000 to 3,000,000	8
Over 3,000,000 to 10,000,000	9
Over 10,000,000	10

Table III—Size of Metal/Nonmetal Mine

Annual hours worked at mine	Penalty Points
0 to 5,000	0
Over 5,000 to 10,000	1
Over 10,000 to 20,000	2
Over 20,000 to 30,000	3
Over 30,000 to 50,000	4
Over 50,000 to 100,000	5
Over 100,000 to 200,000	6
Over 200,000 to 300,000	7
Over 300,000 to 500,000	8
Over 500,000 to 700,000	9
Over 700,000 to 1,000,000	10
Over 1,000,000 to 1,500,000	11
Over 1,500,000 to 2,000,000	12
Over 2,000,000 to 3,000,000	13
Over 3,000,000 to 5,000,000	14
Over 5,000,000	15

Table IV—Size of Controlling Entity—Metal/Nonmetal Mine

Annual hours worked	Penalty Points
0 to 50,000	0
Over 50,000 to 100,000	1
Over 100,000 to 200,000	2
Over 200,000 to 300,000	3
Over 300,000 to 500,000	4
Over 500,000 to 1,000,000	5
Over 1,000,000 to 2,000,000	6
Over 2,000,000 to 3,000,000	7
Over 3,000,000 to 5,000,000	8
Over 5,000,000 to 10,000,000	9
Over 10,000,000	10

Table V-Size of Independent Contractor

Annual hours worked at all mines	Penalty Points
0 to 5,000	0
Over 5,000 to 7,000	2
Over 7,000 to 10,000	4
Over 10,000 to 20,000	6
Over 20,000 to 30,000	8
Over 30,000 to 50,000	10
Over 50,000 to 70,000	12
Over 70,000 to 100,000	14
Over 100,000 to 200,000	16
Over 200,000 to 300,000	18
Over 300,000 to 500,000	20
Over 500,000 to 700,000	22
Over 700,000 to 1,000,000	24
Over 1,000,000	25

(c) *History of previous violations.* An operator's history of previous violations is based on both the total number of violations and the number of repeat violations of the same citable provision of a standard in a preceding 15-month period. Only assessed violations that have been paid or finally adjudicated, or have become final orders of the Commission will be included in determining an operator's history. The repeat aspect of the history criterion in paragraph (c)(2) of this section applies only after an operator has received 10 violations or an independent con-

tractor operator has received 6 violations.

(1) Total number of violations. For mine operators, penalty points are assigned on the basis of the number of violations per inspection day (VPID)(Table VI). Penalty points are not assigned for mines with fewer than 10 violations in the specified history period. For independent contractors, penalty points are assigned on the basis of the total number of violations at all mines (Table VII). This aspect of the history criterion accounts for a maximum of 25 penalty points.

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Table VI—History of Previous Violations—Mine Operators

Mine Operator's Overall History of Violations Per Inspection Day	Penalty Points
0 to 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0.7	5
Over 0.7 to 0.9	8
Over 0.9 to 1.1	10
Over 1.1 to 1.3	12
Over 1.3 to 1.5	14
Over 1.5 to 1.7	16
Over 1.7 to 1.9	19
Over 1.9 to 2.1	22
Over 2.1	25

Table VII—History of Previous Violations—Independent Contractors

Independent Contractor's Overall History of Number of Violations	Penalty Points
0 to 5	0
6	1
7	2
8	3
9	4
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
Over 29	25

(2) Repeat violations of the same standard. Repeat violation history is based on the number of violations of the same citable provision of a standard in a preceding 15-month period. For coal and metal and nonmetal mine operators with a minimum of six repeat violations, penalty points are assigned

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on the basis of the number of repeat violations per inspection day (RPID) (Table VIII). For independent contractors, penalty points are assigned on the

basis of the number of violations at all mines (Table IX). This aspect of the history criterion accounts for a maximum of 20 penalty points (Table VIII).

Table VIII-History of Previous Violations-Repeat Violations for Coal and Metal and Nonmetal Operators with a Minimum of 6 Repeat Violations

Number of Repeat Violations Per Inspection Day	Final Rule Penalty Points
0 to 0.01	0
Over 0.01 to 0.015	1
Over 0.015 to 0.02	2
Over 0.02 to 0.025	3
Over 0.025 to 0.03	4
Over 0.03 to 0.04	5
Over 0.04 to 0.05	6
Over 0.05 to 0.06	7
Over 0.06 to 0.08	8
Over 0.08 to 0.10	9
Over 0.10 to 0.12	10
Over 0.12 to 0.14	11
Over 0.14 to 0.16	12
Over 0.16 to 0.18	13
Over 0.18 to 0.20	14
Over 0.20 to 0.25	15
Over 0.25 to 0.3	16
Over 0.3 to 0.4	17
Over 0.4 to 0.5	18
Over 0.5 to 1.0	19
Over 1.0	20

Table IX-History of Previous Violations-Repeat Violations for Independent Contractors

Number of Repeat Violations of the Same Standard	Final Rule Penalty Points
5 or fewer	0
6	2
7	4
8	6
9	8
10	10
11	12
12	14
13	16
14	18
More than 14	20

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(d) *Negligence*. Negligence is conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risks of harm. Under the Mine Act, an operator is held to a high standard of care. A mine operator is required to be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices. The failure to exercise a high standard of care constitutes

negligence. The negligence criterion assigns penalty points based on the degree to which the operator failed to exercise a high standard of care. When applying this criterion, MSHA considers mitigating circumstances which may include, but are not limited to, actions taken by the operator to prevent or correct hazardous conditions or practices. This criterion accounts for a maximum of 50 penalty points, based on conduct evaluated according to Table X.

Table X-Negligence

Categories	Penalty Points
No negligence (The operator exercised diligence and could not have known of the violative condition or practice.)	0
Low negligence (The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.)	10
Moderate negligence (The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)	20
High negligence (The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.)	35
Reckless disregard (The operator displayed conduct which exhibits the absence of the slightest degree of care.)	50

(e) *Gravity*. Gravity is an evaluation of the seriousness of the violation. This criterion accounts for a maximum of 88 penalty points, as derived from the Ta-

bles XI through XIII. Gravity is determined by the likelihood of the occurrence of the event against which a standard is directed; the severity of the

illness or injury if the event has occurred or was to occur; and the number of persons potentially affected if the event has occurred or were to occur.

Table XI-Gravity: Likelihood

Likelihood of occurrence	Penalty Points
No likelihood	0
Unlikely	10
Reasonably likely	30
Highly likely	40
Occurred	50

Table XII-Gravity: Severity

Severity of injury or illness if the event has occurred or were to occur	Penalty Points
No lost work days (All occupational injuries and illnesses as defined in 30 CFR Part 50 except those listed below.)	0
Lost work days or restricted duty (Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)	5
Permanently disabling (Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.)	10
Fatal (Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)	20

Table XIII-Gravity: Persons Potentially Affected

Number of persons potentially affected if the event has occurred or were to occur	Penalty Points
0	0
1	1
2	2
3	4
4	6
5	8
6	10
7	12
8	14
9	16
10 or more	18

(f) *Demonstrated good faith of the operator in abating the violation.* This criterion provides a 10% reduction in the penalty amount of a regular assessment where the operator abates the

violation within the time set by the inspector.

(g) *Penalty conversion table.* The penalty conversion table is used to convert the total penalty points to a dollar amount.

Table XIV—Penalty Conversion Table

Points	Penalty (\$)
60 or fewer	112
61	121
62	131
63	142
64	154
65	167
66	181
67	196
68	212
69	230
70	249
71	270
72	293
73	317
74	343
75	372
76	403
77	436
78	473
79	512
80	555
81	601
82	651
83	705
84	764
85	828
86	897
87	971
88	1,052
89	1,140
90	1,235
91	1,337
92	1,449
93	1,569
94	1,700
95	1,842
96	1,995
97	2,161
98	2,341
99	2,536
100	2,748
101	2,976
102	3,224
103	3,493

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Points	Penalty (\$)
104	3,784
105	4,099
106	4,440
107	4,810
108	5,211
109	5,645
110	6,115
111	6,624
112	7,176
113	7,774
114	8,421
115	9,122
116	9,882
117	10,705
118	11,597
119	12,563
120	13,609
121	14,743
122	15,971
123	17,301
124	18,742
125	20,302
126	21,993
127	23,825
128	25,810
129	27,959
130	30,288
131	32,810
132	35,543
133	38,503
134	41,574
135	44,645
136	47,716
137	50,787
138	53,858
139	56,929
140 or more	60,000

(h) The effect of the penalty on the operator's ability to continue in business. MSHA presumes that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may, however, submit information to the

District Manager concerning the financial status of the business. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the penalty may be reduced.

§ 100.4 Unwarrantable failure.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be \$2,000.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be \$4,000.

§ 100.5 Determination of penalty amount; special assessment.

(a) MSHA may elect to waive the regular assessment under §100.3 if it determines that conditions warrant a special assessment.

(b) When MSHA determines that a special assessment is appropriate, the proposed penalty will be based on the six criteria set forth in §100.3(a). All findings shall be in narrative form.

(c) Any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than \$6,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty which shall not be more than \$275 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than \$220,000. For purposes of this section, a flagrant violation means "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury."

(f) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than \$5,000 and not

more than \$60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine which has a reasonable potential to cause death.

§ 100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.

(a) All parties shall be afforded the opportunity to review with MSHA each citation and order issued during an inspection. It is within the sole discretion of MSHA to grant a request for a conference and to determine the nature of the conference.

(b) Upon notice by MSHA, all parties will have 10 days within which to submit additional information or request a safety and health conference with the District Manager or designee. A conference request may include a request to be notified of, and to participate in, a conference initiated by another party. A conference request must be in writing and must include a brief statement of the reason why each citation or order should be conferenced.

(c) When a conference is conducted, the parties may submit any additional relevant information relating to the violation, either prior to or at the conference. To expedite the conference, the official assigned to the case may contact the parties to discuss the issues involved prior to the conference.

(d) MSHA will consider all relevant information submitted in a timely manner by the parties with respect to the violation. When the facts warrant a finding that no violation occurred, the citation or order will be vacated. Upon conclusion of the conference, or expiration of the conference request period, all citations that are abated and all orders will be promptly referred to MSHA's Office of Assessments. The Office of Assessments will use the citations, orders, and inspector's evaluation as the basis for determining the appropriate amount of a proposed penalty.

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§ 100.7 Notice of proposed penalty; notice of contest.

(a) A notice of proposed penalty will be issued and served by certified mail, or the equivalent, upon the party to be charged and by regular mail to the representative of miners at the mine after the time permitted to request a conference under §100.6 expires, or upon the completion of a conference, or upon review by MSHA of additional information submitted in a timely manner.

(b) Upon receipt of the notice of proposed penalty, the party charged shall have 30 days to either:

(1) Pay the proposed assessment. Acceptance by MSHA of payment tendered by the party charged will close the case.

(2) Notify MSHA in writing of the intention to contest the proposed penalty. When MSHA receives the notice of contest, it advises the Federal Mine Safety and Health Review Commission (Commission) of such notice. No proposed penalty which has been contested before the Commission shall be compromised, mitigated or settled except with the approval of the Commission.

(c) If the proposed penalty is not paid or contested within 30 days of receipt,

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the proposed penalty becomes a final order of the Commission and is not subject to review by any court or agency.

§ 100.8 Service.

(a) All operators are required by part 41 (Notification of Legal Identity) of this chapter to file with MSHA the name and address of record of the operator. All representatives of miners are required by part 40 (Representative of Miners) of this chapter to file with MSHA the mailing address of the person or organization acting in a representative capacity. Proposed penalty assessments delivered to those addresses shall constitute service.

(b) If any of the parties choose to have proposed penalty assessments mailed to a different address, the Office of Assessments must be notified in writing of the new address. Delivery to this address shall also constitute service.

(c) Service for operators who fail to file under part 41 of this chapter will be upon the last known business address recorded with MSHA.

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