

## GENERAL PROCEDURES

Effective Date: 1/15/2024

### 1. Special Assessment Penalty Targets

Penalty points for a violation correspond to a dollar value. MSHA converts the total number of special assessment penalty points to a target penalty between \$164 and \$88,354. The table below summarizes the penalty point and dollar assessment ranges for non-flagrant special assessments.

<b>Total Number of Special Assessment Penalty Points</b>	<b>Proposed Target Penalty</b>
60 or fewer Points	\$164
61 - 139 Points	Penalty Conversion Table from Table 14, 30 CFR 100.3(g)
140 or more Points	\$88,354

(Also see Table 14-Penalty Conversion Table, in 30 CFR 100.3(g)  
<https://arlweb.msha.gov/regs/30cfr/>)

For violations that are designated as flagrant, the target penalty increases by \$1,745.23 per penalty point up to a maximum of \$323,960 for 275 points. A flagrant violation is defined as a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially or proximately causes, or reasonably could have been expected to cause, death or serious bodily injury. The following table shows the penalty conversion schedule for flagrant violations.

<b>Special Assessment Penalty Conversion Table for Flagrant Violations</b>							
Penalty Points	Dollar Amount	Penalty Points	Dollar Amount	Penalty Points	Dollar Amount	Penalty Points	Dollar Amount
141	\$90,099	175	\$149,437	209	\$208,775	243	\$268,113
142	\$91,844	176	\$151,182	210	\$210,520	244	\$269,858
143	\$93,590	177	\$152,927	211	\$212,265	245	\$271,603
144	\$95,335	178	\$154,673	212	\$214,011	246	\$273,348
145	\$97,080	179	\$156,418	213	\$215,756	247	\$275,094
146	\$98,825	180	\$158,163	214	\$217,501	248	\$276,839
147	\$100,571	181	\$159,908	215	\$219,246	249	\$278,584
148	\$102,316	182	\$161,654	216	\$220,991	250	\$280,329
149	\$104,061	183	\$163,399	217	\$222,737	251	\$282,074

150	\$105,806	184	\$165,144	218	\$224,482	252	\$283,820
151	\$107,552	185	\$166,889	219	\$226,227	253	\$285,565
152	\$109,297	186	\$168,635	220	\$227,972	254	\$287,310
153	\$111,042	187	\$170,380	221	\$229,718	255	\$289,055
154	\$112,787	188	\$172,125	222	\$231,463	256	\$290,801
155	\$114,532	189	\$173,870	223	\$233,208	257	\$292,546
156	\$116,278	190	\$175,615	224	\$234,953	258	\$294,291
157	\$118,023	191	\$177,361	225	\$236,699	259	\$296,036
158	\$119,768	192	\$179,106	226	\$238,444	260	\$297,782
159	\$121,513	193	\$180,851	227	\$240,189	261	\$299,527
160	\$123,259	194	\$182,596	228	\$241,934	262	\$301,272
161	\$125,004	195	\$184,342	229	\$243,679	263	\$303,017
162	\$126,749	196	\$186,087	230	\$245,425	264	\$304,762
163	\$128,494	197	\$187,832	231	\$247,170	265	\$306,508
164	\$130,240	198	\$189,577	232	\$248,915	266	\$308,253
165	\$131,985	199	\$191,323	233	\$250,660	267	\$309,998
166	\$133,730	200	\$193,068	234	\$252,406	268	\$311,743
167	\$135,475	201	\$194,813	235	\$254,151	269	\$313,489
168	\$137,220	202	\$196,558	236	\$255,896	270	\$315,234
169	\$138,966	203	\$198,303	237	\$257,641	271	\$316,979
170	\$140,711	204	\$200,049	238	\$259,387	272	\$318,724
171	\$142,456	205	\$201,794	239	\$261,132	273	\$320,470
172	\$144,201	206	\$203,539	240	\$262,877	274	\$322,215
173	\$145,947	207	\$205,284	241	\$264,622	275	\$323,960
174	\$147,692	208	\$207,030	242	\$266,367		

## **2. Special Assessment Penalty Adjustments**

The Office of Assessments (OA) may adjust the computed target penalty amount by +/- 25% within the penalty range of \$164 minimum and \$88,354 maximum (\$323,960 maximum for flagrant violations). An adjustment of more than +/- 25% may occur at the discretion of OA based on the unique facts and circumstances surrounding a violation.

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## **ASSIGNMENT OF SPECIAL ASSESSMENT PENALTY POINTS**

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MSHA assigns special assessment penalty points to most violations for five of the six statutory criteria used in determination of regular assessment penalty points in 30 CFR 100.3(a), sections I-VI. Additional procedures are used for assigning special assessment penalty points for violations pertaining to training violations not contributing to an accident or injury, miner smoking violations,

discrimination violations issued under section 105(c) of the Act, and agent violations issued under section 110(c) of the Act.

## **1. Size of Business**

MSHA assigns assessment penalty points for the Size of Business based on mine size and controller size during the previous calendar year. A coal mine operator's size is based on the tons produced at the mine and the tons produced at all mines under the controlling entity. A metal/nonmetal mine operator's size is based on the number of hours worked at the mine and the hours worked at all mines under the controlling entity. An independent contractor's size is based on annual hours worked at all mines. MSHA does not consider the controlling entity for independent contractors.

For most special assessments, MSHA assigns the regular assessment penalty points for size derived from Tables I – V, 30 CFR 100.3(b).

## **2. Violation History**

Mine operators are assigned penalty points from Tables VI and VIII, 30 CFR 100.3(c), based on the number of violations per inspection day and on the number of repeat violations of the same standard per inspection day at the mine during the previous 15-month violation history period.

Independent contractors are assigned penalty points from Tables VII and IX, 30 CFR 100.3(c), based on the total number of violations and on the total number of repeat violations of the same standard at all mines. Assessed violations that became final orders of the Federal Mine Safety and Health Review Commission (FMSHRC) during the 15-month violation history period are used in determining violation history.

The violation histories for all mines and independent contractors are available on MSHA's web site at <https://arlweb.msha.gov/drs/drshome.htm>.

For special assessments, MSHA assigns the regular assessment penalty points for Violation History from Tables VI and VII, 30 CFR 100.3(c). For Repeat Violation History, MSHA assigns the regular assessment penalty points from Tables VIII and IX, 30 CFR 100.3(c), except for flagrant violations.

For flagrant violations, MSHA assigns special assessment penalty points for Repeat Violation History as follows:

<i>Number of Repeat Violations</i>	<i>Points</i>	<i>Number of Repeat Violations</i>	<i>Points</i>
None	0	11	16
2	7	12	17
3	8	13	18
4	9	14	19
5	10	15	20
6	11	16	21
7	12	17	22
8	13	18	23
9	14	19	24
10	15	>=20	25

### **3. Negligence**

For negligence, MSHA adds the following special assessment penalty points to the regular assessment points from Table X, 30 CFR 100.3(d):

- 5 points for a violation not contributing to an accident;
- 7 points for Low or Moderate negligence for a violation contributing to an accident;
- 8 points for High or Reckless Disregard negligence for a violation contributing to a non-injury accident; and
- 10 points for a violation contributing to a lost workdays, restricted duty, permanently disabling, or a fatal accident.

MSHA assigns a total of 50 negligence points for a flagrant violation with high negligence and a total of 60 negligence points for a flagrant violation with reckless disregard negligence.

### **4. Gravity**

Gravity is evaluated through a combination of the likelihood of an occurrence of an event against which a standard is:

- Directed;
- The severity of the illness or injury if the event occurred or was to occur; and
- The number of persons potentially affected by the event.

MSHA assigns special assessment penalty points for Gravity as follows:

**(a) Special Assessment Penalty Points for Likelihood of Occurrence of Event**

MSHA assigns the following special assessment penalty points for a violation not contributing to an accident:

<b><i>Gravity - Likelihood of Occurrence</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Likelihood	0
Unlikely	15
Reasonably Likely	35
Highly Likely	45
Occurred	55

MSHA assigns the following special assessment penalty points for a violation contributing to a non-injury accident:

<b><i>Gravity - Likelihood of Occurrence</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Likelihood	0
Unlikely	15
Reasonably Likely	35
Highly Likely	45
Occurred	55

MSHA assigns the following special assessment penalty points for a violation contributing to an accident with injury or a flagrant violation:

<b><i>Gravity - Likelihood of Occurrence</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Likelihood	0
Unlikely	15
Reasonably Likely	35
Highly Likely	45
Occurred	55

**(b) Special Assessment Penalty Points for Severity of EXPECTED Injury or Illness**

MSHA assigns the following special assessment penalty points for severity of expected injury or illness for violations not contributing to an accident:

<b><i>Gravity - Severity of Injury or Illness</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Lost Workdays	0
Lost Workdays	10
Permanently Disabling	15
Fatal	25

MSHA assigns the following special assessment penalty points for severity of expected injury or illness for violations contributing to a non-injury accident:

<b><i>Gravity – Severity of Injury or Illness</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Lost Workdays	0
Lost Workdays	10
Permanently Disabling	15
Fatal	25

MSHA assigns the following special assessment penalty points for severity of expected injury or illness for violations contributing to an accident with injury:

<b><i>Gravity – Severity of Injury or Illness</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Lost Workdays	0
Lost Workdays	10
Permanently Disabling	20
Fatal	30

MSHA assigns the following special assessment penalty points for all flagrant violations:

<b><i>Gravity - Severity of Injury or Illness</i></b>	<b><i>Special Assessment Penalty Points</i></b>
No Lost Workdays	N/A
Lost Workdays	N/A
Permanently Disabling	40
Fatal	50

When a serious injury accident has occurred, MSHA adds up to 12 special assessment penalty points to account for the severity of the actual injury. See table below for the number of special assessment points added for actual injuries or illnesses.

<b><i>Severity of ACTUAL Injury or Illness (Permanently Disabling)</i></b>	<b><i>Special Assessment Penalty Points</i></b>
Lost Workdays or Restricted Duty	2
Partial - to one limb or organ	5
Full - to one limb or organ	7
Full or Partial - to multiple limbs or organs, or to torso, neck, or head	10
Fatal	12

**(c) Special Assessment Penalty Points for Number of Persons  
POTENTIALLY Affected**

MSHA assigns the regular assessment penalty points in Table XIII, 30 CFR 100.3(e), for special assessment violations contributing and not contributing to an accident.

MSHA assigns the following special assessment penalty points for a flagrant violation:

<b><i>Gravity - Persons Potentially Affected</i></b>	<b><i>Special Assessment Penalty Points</i></b>
0	0
1	10
2	11
3	12
4	13
5	14
6	15
7	16
8	17
9	18
>=10	25

## **5. Unwarrantable Failure**

Citations and orders issued under section 104(d) of the Mine Act are issued for violations caused by an “unwarrantable failure” to comply.

- MSHA adds 3 special assessment penalty points for a 104(d) violation not contributing to an accident
- MSHA adds 5 special assessment penalty points for a 104(d) violation contributing to an accident or designated as flagrant.

The minimum penalty for any citation or order issued under Section 104(d)(1) of the Mine Act is \$2,945 and the minimum for any order issued under Section 104(d)(2) of the Mine Act is \$5,888.

## **6. Abatement & Good Faith**

In general, if an operator abates a citation within a reasonable period of time, as prescribed by the citation, the total number of special assessment penalty points is reduced by 2 points. There is no penalty point reduction for an order of withdrawal, citations issued in conjunction with orders, flagrant violations, and any citation contributing to an accident or any violation of the Mine Act.

When a citation is not abated within the time allotted, MSHA may assess a daily penalty of up to \$9,571 for each day the citation remains unabated.

## **7. Imminent Danger**

MSHA adds 2 special assessment penalty points for violations contributing to an imminent danger situation.

## **8. Citations for Working in Defiance of an Order**

MSHA adds 3 penalty points for a citation issued for working in defiance of a withdrawal order. MSHA adds an additional 5 points (for a total of 8) if the violation contributed to an accident.

## **9. Citations for Immediate Notification Violations**

The minimum penalty for any citation issued for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act (30 CFR 50.10) is \$7,364, the maximum is \$88,354.