

News Release



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U.S. Department of Labor's MSHA to publish final rule on civil penalties

ARLINGTON, Va. – The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) will publish tomorrow, March 22, in the *Federal Register*, a final rule on civil penalties, revising the agency's existing civil penalty assessment regulations and implementing procedures regarding the civil penalty provisions of the Mine Improvement and New Emergency Response Act of 2006. The rule will become effective 30 days after publication.

"Penalties are one of many tools that Congress approved to ensure a safe and healthful workplace for miners," said Richard E. Stickler, assistant secretary of labor for mine safety and health. "MSHA has structured the final rule so that higher penalties will induce operators to prevent and correct violations and be more proactive in their overall approach to miner safety and health, as well as target the most serious safety and health violations with escalating penalties."

Although the civil penalty final rule will result in an across-the-board increase in penalties, the amounts will increase more significantly for operators with histories of repeat violations of the same standard and operators whose violations involve high degrees of negligence or gravity. The final rule eliminates the single penalty assessment provision of \$60 for non-significant and substantial violations in favor of a regular assessment. It also includes minimum penalties of \$2,000 and \$4,000, depending on whether there is a withdrawal order, for unwarrantable failure violations. In addition, flagrant violations – those involving "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" – may receive a maximum penalty of \$220,000. Finally, a mine operator who fails to timely notify MSHA of a death, or injury or entrapment with a reasonable potential to cause death, may face penalties between \$5,000 and \$60,000.

One of MSHA's goals for this rulemaking is to improve the effectiveness and efficiency of the civil penalty process. The existing special assessment provision has proved time-consuming and resource-intensive. Under the final rule, most violations will be processed as regular assessments. This change will enhance the consistency and timeliness of the assessment system. Furthermore, penalties issued closer to the date of a citation or order ultimately will have a more meaningful, behavior-changing effect on mine operators.

The final rule will remove the list of eight categories that MSHA now automatically reviews for possible special assessment; violations issued to agents, flagrant violations, violations for failure to timely notify MSHA and violations contributing to fatal accidents will be routinely reviewed for special assessment. MSHA will retain authority to specially assess penalties for other violations, as appropriate. The rule also will provide 10 days for safety and health conference requests and require that every request be in writing and contain a brief statement as to why each citation or order should be conferenced.

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