

MSHA GUIDELINES FOR SPECIAL ASSESSMENT PENALTIES

PURPOSE

We designed these guidelines for two reasons:

- (1) To help MSHA propose more consistent special assessment penalties for similar violations, without depriving the assessor of the flexibility to adjust the proposed penalty for a specific violation, if warranted; and
- (2) To clarify for mine operators and other interested persons MSHA's basis for determining proposed special assessment penalties.

BACKGROUND

The Federal Mine Safety and Health Act of 1977 (the Act) authorizes civil penalties under sections 110(a), 110(c), and 110(g). MSHA proposes penalties for violations under 30 CFR part 100 on the basis of the following six statutory criteria:

1. The appropriateness of the penalty relative to the size of the operator's business;
2. The operator's history of previous violations;
3. The operator's negligence;
4. The gravity of the violation;
5. The "good faith" of the operator in abating the violation; and
6. The effect the penalty has on the operator's ability to stay in business.

We assess the majority of penalties using penalty tables contained in 30 CFR 100.3. These are *regular assessments*. We assess certain less serious violations a single penalty of \$60 under the provisions of § 100.4. These are *single penalty assessments*. In a given year, however, we assess approximately 5% of the violations, the most severe, under the provisions of § 100.5. These are *special assessments*.

As described in § 100.5, we may propose a *special assessment* for violations involving any of the following:

- A fatality or serious injury;
- An unwarrantable failure to comply;
- Individuals who are personally liable;
- An extraordinarily high degree of negligence;
- Operating while subject to a closure order;

- Refusing to allow inspectors to enter;
- Allowing an imminent danger situation or condition to exist; or
- Discriminating against a miner for engaging in a protected activity.

GENERAL PROCEDURES

Most special assessments are computed by increasing the regular assessment point value for the first four of six criteria as assigned in Tables I through XI of § 100.3. The point value increase is based primarily on an increase in penalty points assigned to the third and fourth criterion, gravity and negligence. The fifth criterion allows for a reduction in the penalty points for timely abated citations not contributing to an accident. For special assessments, MSHA assigns additional penalty points for violations contributing to an accident or injury. MSHA considers the sixth criterion, the effect of the penalty on the operator's ability to stay in business, only when the mine operator or independent contractor appeals the proposed penalty assessment.

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 using the Special Assessment Penalty Conversion Table in the Appendix, with limits, as follows.

Total Number of Special Assessment Penalty Points	Proposed Target Penalty
<33; minimum penalty	\$200
33 to 79	Penalty Conversion Table from 30 CFR 100.3(g)
80 to 109	Expanded range for penalties above \$10,000
110 or more; maximum penalty	\$60,000

2. Special Assessment Penalty Adjustments

The assessor may adjust the computed target penalty amount by $\pm 25\%$ or $\pm \$200$, whichever is greater, within the penalty range of \$200 minimum and \$60,000 maximum. This flexibility is necessary to account for the unique facts and circumstances surrounding a violation. The assessor must base the adjustment on specific information provided by field personnel in the citation/order, in the special assessment review form, or in phone conversations. For example, field personnel may provide additional information on the criteria which would justify a penalty increase or decrease.

In rare cases, the assessor may propose penalties outside the $\pm 25\%$ range. In these cases, the assessor must document the facts and circumstances supporting a penalty outside the normal range in the "Narrative Findings for a Special Assessment" provided to the operator.

ASSIGNMENT OF SPECIAL ASSESSMENT PENALTY POINTS FOR SIGNIFICANT AND SUBSTANTIAL (S&S) VIOLATIONS

MSHA assigns special assessment penalty points for five statutory criteria, as described below. Other procedures are used for computing special assessments of non-significant and substantial (non-S&S) violations, 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 regular assessment penalty points for *Size of Business* based on a combination of 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.

(a) Special Assessment Penalty Points for Mine Size and Controller Size

For mine operators, MSHA assigns the regular assessment penalty points for mine size and controller size, derived from § 100.3(b), Tables I through IV. This results in a range from 0 to 15 penalty points. See **Tables 1 and 2** in the Appendix.

(b) Added Special Assessment Penalty Points for Violations Contributing to a Fatal or Permanently Disabling Injury Accident

For mine operators, MSHA adds between 0 and 5 penalty points to the penalty points assigned for the size of the controlling entity when the violation contributes to a fatal or permanently disabling injury. These serious violations warrant additional penalty points because the larger controlling entities generally have more resources and experience to apply to the prevention of accidents. The added penalty points also compensate for certain coal operations, such as shops or preparation plants, that do not report tonnage, and for large metal and nonmetal controlling entities with numerous small mines. See **Table 3** in the Appendix.

(c) Special Assessment Penalty Points for Size of Independent Contractor

For independent contractors, MSHA assigns the regular assessment penalty points for independent contractor size, derived from § 100.3(b), Table V. This results in a range from 0 to 10 penalty points. See **Table 4** in the Appendix.

2. Violation History

MSHA assigns regular assessment penalty points for violation history as described in § 100.3(c), Table VI. This results in a penalty point range from 0 to 20 penalty points. See **Table 5** in the Appendix.

Mine operators are assigned penalty points from Table VI based on the number of violations per inspection day at the mine during the previous 24-month violation history period. If a mine has 20 or fewer violations during this period, MSHA assigns penalty points using the same scale as used for an independent contractor. Mine operators with 20 or fewer violations are frequently small in size and have few inspection days. By assigning penalty points based on the number of violations, MSHA intends to offset a disproportionately high penalty that may result from a high ratio of violations per inspection day when there are few inspection days.

Independent contractors are assigned penalty points from § 100.3(c), Table VII, based on the average number of violations assessed per year at all mines.

3. Negligence

Of the criteria used in assessing penalties for violations, MSHA considers *Negligence* to be the most important. Overall, MSHA assigns more penalty points to this criterion because the operator, independent contractor, or their agent, has more control over *Negligence* than any other single factor. This criterion considers an operator's failure to exercise an appropriate degree of care to protect miners from hazards.

MSHA citations are of two types based on a specific section of the Mine Act: section 104 (a) citations are issued for most violations and section 104(d) citations and orders are issued for violations with a finding of "unwarrantable failure" to comply. MSHA assesses 104(d) citations and orders using the same negligence criteria and penalty points. Because of the finding of "unwarrantable failure," however, MSHA adds the following penalty points. See **Table 6** in the Appendix.

Add 3 penalty points for a 104(d) than a 104(a) violation not contributing to an accident, with a range of 13 to 31 penalty points.

Add 4 penalty points for a 104(d) than a 104(a) violation contributing to a non-injury or no lost workdays injury accident, with a range of 15 to 34 penalty points.

Add 5 penalty points for a 104(d) than a 104(a) violation contributing to a restricted duty, lost workdays, permanently disabling, or fatal injury accident, with a range of 17 to 46 penalty points.

4. Gravity

Gravity is a measure of the likelihood of 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.

(a) Special Assessment Penalty Points for Likelihood of Occurrence of Event and Severity of EXPECTED Injury or Illness

MSHA assigns an additional 2 penalty points for all violations contributing to an accident, over that assigned for violations not contributing to an accident, when the expected severity of the resulting injury or illness is a "lost workdays or restricted duty," "permanently disabling," or "fatal" injury. A range from 0 to 27 special assessment penalty points is assigned for likelihood of occurrence and expected severity. See **Table 7** in the Appendix. MSHA adds 2 more penalty points to the special assessment penalty points for all violations associated with an imminent danger order.

(b) Additional Special Assessment Penalty Points for a Serious Injury Accident

When a serious injury accident has occurred, MSHA assigns 4 to 16 additional special assessment penalty points to account for the severity of the actual injury experienced, including 7 to 13 penalty points for three levels of "permanently disabling" injuries. See **Table 8** in the Appendix.

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

MSHA assigns from 0 to 22 penalty points for the number of persons potentially affected by a violation, with the higher number of penalty points for violations contributing to an accident. See **Table 9** in the Appendix.

5. Abatement & Good Faith

If an operator abates a citation within a reasonable period of time, as prescribed by the citation, the MSHA assessor can reduce the total number of special assessment penalty points by 2 penalty points. There will be no penalty point reduction for an order of withdrawal or any citation contributing to an accident. When the mine operator fails to abate a citation within the prescribed period of time, MSHA may issue a 104(b) order for failure to abate the citation. When a 104(b) order is issued, MSHA assigns 10 additional penalty points. See **Table 10** in the Appendix.

ASSIGNMENT OF SPECIAL ASSESSMENT PENALTY POINTS TO CITATIONS FOR WORKING IN DEFIANCE OF AN ORDER

MSHA adds 3 penalty points for a citation issued for working in defiance of an order. MSHA adds 5 penalty points if the violation contributed to an accident and 10 penalty points if the citation is issued for working in defiance of a 104 (b) order that was issued for failure to abate a previous citation. This results in a range of 3 to 18 special assessment penalty points. See **Table 11** in the Appendix.

For non-S&S citations issued in conjunction with any order, MSHA will use regular assessment criteria in determining the special assessment penalty points.

ASSIGNMENT OF SPECIAL ASSESSMENT PENALTY POINTS FOR NON-SIGNIFICANT AND SUBSTANTIAL (NON-S&S) CITATIONS

1. Base Special Assessment Penalty Points

Timely abated citations that are not subject to excessive violation history and not reasonably likely to result in a reasonably serious injury or illness (non-S&S) will be assigned a 30-point base for computing special assessment penalties. Additional penalty points are then added to the 30-point base, as follows:

2. Negligence

Add 4 more penalty points for moderate negligence.

Add 7 more penalty points for high negligence.

Add 10 more penalty points for reckless disregard.

3. Gravity

From 0 to 16 additional penalty points are added to the 30-point base for the severity of expected injury and number of persons potentially affected. See **Table 12** in the Appendix.

4. Repeat Violations of Standard

From 0 to 8 additional penalty points are added to the 30-point base for repeat violations of the same standard cited during the 24-month violation history period, except bi-monthly respirable dust sampling violations. From 0 to 24 additional penalty points are added where the mine operator fails repeatedly to take or submit a valid bi-monthly respirable dust sample. See **Table 13** in the Appendix.

SPECIAL ASSESSMENT PENALTY CONVERSION TABLE

After computing the appropriate penalty points based on the criteria assigned in the violation and considering the operator's good faith efforts, MSHA converts the penalty points to the corresponding dollar amount using the Special Assessment Penalty Conversion Table. See **Table 14** in the Appendix.

APPENDIX

TO MSHA GUIDELINES FOR SPECIAL ASSESSMENT PENALTIES

Table 1: Special Assessment Penalty Points for Coal Mine Size and Controller Size						
Mine Size (Annual Tons x 1,000)	Size of Controlling Entity (Annual Tons x 1,000)					
	0-100	>100-700	>700-1,500	>1,500-5,000	>5,000-10,000	>10,000
0-15	0	1	2	3	4	5
>15-30	1	2	3	4	5	6
>30-50	2	3	4	5	6	7
>50-100	3	4	5	6	7	8
>100-200	4	5	6	7	8	9
>200-300	5	6	7	8	9	10
>300-500	6	7	8	9	10	11
>500-800	7	8	9	10	11	12
>800-1,100	8	9	10	11	12	13
>1,100-2,000	9	10	11	12	13	14
>2,000	10	11	12	13	14	15

Table 2: Special Assessment Penalty Points for Metal and Nonmetal Mine Size and Controller Size						
Mine Size (Annual Hours Worked x 1,000)	Size of Controlling Entity (Annual Hours Worked x 1,000)					
	>0-60	>60-400	>400-900	>900-3,000	>3,000-6,000	>6,000
>0-10	0	1	2	3	4	5
>10-20	1	2	3	4	5	6
>20-30	2	3	4	5	6	7
>30-60	3	4	5	6	7	8
>60-100	4	5	6	7	8	9
>100-200	5	6	7	8	9	10
>200-300	6	7	8	9	10	11
>300-500	7	8	9	10	11	12
>500-700	8	9	10	11	12	13
>700-1,000	9	10	11	12	13	14
>1,000	10	11	12	13	14	15

Table 3: Added Special Assessment Penalty Points for Violations Contributing to a Fatal or Permanently Disabling Accident		
Coal Mine Controlling Entity (Annual Tons x 1,000)	Metal & Nonmetal Mine Controlling Entity (Annual Hours Worked x 1,000)	Special Assessment Penalty Points
0-100	0-60	0
>100-700	>60-400	1
>700-1,500	>400-900	2
>1,500-5,000	>900-3,000	3
>5,000-10,000	>3,000-6,000	4
>10,000	>6,000	5

Table 4: Special Assessment Penalty Points for Size of Independent Contractor (Annual Hours Worked at All Mines x 1,000)										
>0-10	>10-20	>20-30	>30-60	>60-100	>100-200	>200-300	>300-500	>500-700	>700-1,000	>1,000
0	1	2	3	4	5	6	7	8	9	10

Table 5: Special Assessment Penalty Points for Violations History		
Mine Operators with >20 Total Violations over 24 Months (Violations per Inspection Day)	Independent Contractors (Average Number of Violations per Year at All Mines) or Mine Operators with ≤ 20 Total Violations over 24 Months (Total Number of Violations)	Special Assessment Penalty Points
0 - 0.3	1 – 5	0
>0.3 – 0.5	6 – 10	2
>0.5 – 0.7	11 – 15	4
>0.7 – 0.9	16 – 20	6
> 0.9 – 1.1	21 – 25	8
>1.1 – 1.3	26 – 30	10
>1.3 – 1.5	31 – 35	12
>1.5 – 1.7	36 – 40	14
>1.7 – 1.9	41 – 45	16
>1.9 – 2.1	46 – 50	18
>2.1	>50	20

Table 6: Special Assessment Penalty Points for Violations Resulting from the Negligence of the Operator or Independent Contractor						
Degree of Negligence	Type of Violation					
	Not contributing to an accident		Contributing to a non-injury or no lost workdays injury accident		Contributing to a restricted duty, lost workdays, permanently disabling, or fatal injury accident	
	104(a)	104(d)	104(a)	104(d)	104(a)	104(d)
Low	13	N/A*	15	N/A*	17	N/A*
Moderate	18	21	20	24	25	30
High	23	26	25	29	33	38
Reckless Disregard	28	31	30	34	41	46

* N/A means not applicable.

Table 7: Special Assessment Penalty Points for Likelihood And Expected Severity								
Likelihood of Occurrence of Event or Accident Addressed by Violation	Severity of EXPECTED Injury or Illness							
	No Lost Workdays		Lost Workdays or Restricted Duty		Permanently Disabling		Fatal	
	Not Accident Related	Accident Related	Not Accident Related	Accident Related	Not Accident Related	Accident Related	Not Accident Related	Accident Related
No Likelihood	0	0	N/A	N/A	N/A	N/A	N/A	N/A
Unlikely	4	4	9	11	13	15	16	18
Reasonably Likely	7	7	12	14	16	18	19	21
Highly Likely	10	10	15	17	19	21	22	24
Occurred	N/A	13	N/A	20	N/A	24	N/A	27

* N/A means not applicable.

Table 8: Severity of ACTUAL Injury or Illness Experienced				
Lost Workdays or Restricted Duty	Permanently Disabling			Fatal
	Partial - to one limb or organ	Full - to one limb or organ	Full or Partial – to multiple limbs or organs, or to torso, neck, or head	
4	7	10	13	16

Table 9: Special Assessment Penalty Points for Number of Persons Potentially Affected			
Number of Persons Potentially Affected	Type of Violation		
	Not contributing to an accident	Contributing to a non-injury or no lost workdays injury accident	Contributing to lost workdays, permanently disabling, or fatal injury accident
0	0	0	N/A*
1	1	2	6
2	2	4	10
3	4	6	13
4-5	6	8	16
6-9	8	10	19
>9	10	12	22

* N/A means not applicable.

Table 10: Special Assessment Penalty Points for Abatement and Good Faith	
Type of Violation	Special Assessment Penalty Points
Timely-abated citation	2 penalty points reduction if not accident related
Any order or a citation related to an accident	No penalty point reduction
104(a) citation with 104(b) order	10 penalty points added

Table 11: Special Assessment Penalty Points to Citations for Working in Defiance of an Order		
Type of Violation	Additional Special Assessment Penalty Points	
	Not accident related	Accident related
Citation for working in defiance of an order	3	8
Citation for working in defiance of a 104(b) order for a previous citation	13	18

Table 12: Special Assessment Penalty Points for Non-Significant and Substantial Citations by Severity of Expected Injury and Number of Persons Affected			
Number of Persons Potentially Affected	Severity of Expected Injury or Illness		
	Lost Workdays	Permanently Disabling	Fatal
0	0	0	0
1	5	8	11
2	6	9	12
3-4	7	10	13
5-6	8	11	14
7-9	9	12	15
>9	10	13	16

Table 13: Special Assessment Penalty Points for Non-Significant and Substantial Citations by Number of Repeat Violations of Standard		
Number of Repeat Violations of Standard Cited during 24-month Violation History Period	Type of Standard Cited	
	All Citations except Bi-monthly Respirable Dust Sample Violations	Citations for Failure to Take or Submit a Valid Bi-monthly Respirable Dust Sample
0	0	0
1	1	2
2	2	4
3	3	6
4	3	8
5	3	10
6	4	12
7	4	14
8	4	16
9	4	18
10	5	20
11	5	22
12	5	24
13 – 14	5	N/A
15 – 19	6	N/A
20 – 29	7	N/A
≥ 30	8	N/A

* N/A means not applicable.

Table 14: Special Assessment Penalty Conversion Table*			
Penalty Conversion		Penalty Conversion	
Penalty points	Penalty	Penalty points	Penalty
<33; minimum penalty	\$200	72	\$6,678
33	\$207	73	\$6,981
34	\$221	74	\$7,285
35	\$237	75	\$7,588
36	\$254	76	\$7,892
37	\$273	77	\$8,499
38	\$291	78	\$9,106
39	\$310	79	\$9,713
40	\$327	80	\$10,300
41	\$354	81	\$11,500
42	\$383	82	\$13,000
43	\$409	83	\$14,500
44	\$437	84	\$16,000
45	\$463	85	\$17,500
46	\$500	86	\$19,000
47	\$536	87	\$20,500
48	\$629	88	\$22,000
49	\$749	89	\$23,500
50	\$878	90	\$25,000
51	\$1,033	91	\$26,500
52	\$1,198	92	\$28,000
53	\$1,376	93	\$29,500
54	\$1,566	94	\$31,000
55	\$1,769	95	\$32,500
56	\$2,003	96	\$34,000
57	\$2,252	97	\$35,500
58	\$2,515	98	\$37,000
59	\$2,793	99	\$38,500
60	\$3,086	100	\$40,000
61	\$3,419	101	\$42,000
62	\$3,770	102	\$44,000
63	\$4,137	103	\$46,000
64	\$4,521	104	\$48,000
65	\$4,856	105	\$50,000
66	\$5,099	106	\$52,000
67	\$5,342	107	\$54,000
68	\$5,585	108	\$56,000
69	\$5,828	109	\$58,000
70	\$6,071	110; maximum	\$60,000
71	\$6,374		

* The dollar penalties for 33 to 79 penalty points are the same as those in 30 CFR 100.3(g). MSHA expanded the range of penalty points from a maximum of 100 penalty points to a maximum of 110 penalty points to allow the assessor greater flexibility in determining special assessment penalties. We refer to penalties between \$10,000 and \$60,000 as high dollar assessments.