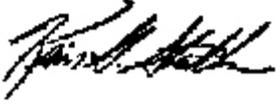
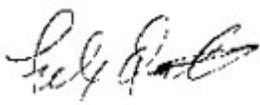


EFFECTIVE DATE: 04/28/08

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PROGRAM POLICY LETTER NO. P08-III-02

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SUBJECT: 30 Code of Federal Regulations (30 C.F.R.) Part 100.5 Determination of penalty; special assessment, and Part 100.6(d); Referral of Citations and Orders for Assessment

Scope

This Program Policy Letter (PPL) is intended for Mine Safety and Health Administration (MSHA) enforcement personnel, Office of Assessments personnel, and other interested parties.

Purpose

Regulations in 30 C.F.R. Part 100.6(d) discuss the referral of citations and orders of withdrawal to the Office of Assessments for assessment of a civil penalty. 30 C.F.R Part 100.5 permits MSHA to waive a regular formula civil penalty assessment if the Agency determines that conditions warrant a special assessment. The purpose of this policy letter is to: 1) clarify when and how citations and orders of withdrawal should be forwarded to the Office of Assessments; 2) clarify the types of violations enforcement personnel must review for special assessment; and 3) clarify the types of violations for which special assessment is mandatory.

Policy

30 C.F.R Part 100.6 Referral of Citations and Orders for Regular Assessment

This section provides mine operators 10 calendar days to request a safety and health conference with the District Manager or his designee. District Managers will ensure that upon the closure of the safety and health conference, expiration of the conference request period, or a District Manager's decision not to schedule a safety and health conference, all citations and orders that are to receive a regular assessment are marked assessment-ready in the MSHA Standardized Information System (MSIS) as soon as possible. District Managers will ensure that all violations are marked assessment-ready in MSIS no later than 11 months from the date of issuance. PEIR has reprogrammed MSIS to allow district personnel to mark citations assessment ready three months after issuance even if citations have not been terminated.

30 C.F.R Part 100.5 Determination of Penalty; Special Assessment

Special assessment is the process of determining an appropriate penalty without using the penalty tables in 30 C.F.R. 100.3. Special *assessment* is mandatory for the following violations: those for which the daily penalty has been invoked under Section 110(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act), those cited to miners related to smoking or the carrying of smoking materials under Section 110(g) of the Mine Act, flagrant violations as defined in the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), violations cited under 30 C.F.R. Part 50.10 for failure to provide immediate notification to MSHA of a death of an individual at a mine or an injury or entrapment of an individual which has reasonable potential to cause death, violations involving personal liability under Section 110(c) of the Mine Act, and violations involving discrimination under Section 105(c) of the Mine Act.

Special assessment *review* is required for all violations that contribute to a fatality or serious injury. However, special *assessment* is not mandatory for those violations as they may involve circumstances for which MSHA determines, in its discretion, special assessment is not warranted.

District Managers may recommend **any** violation for special assessment if circumstances warrant. After the issuing inspector and the inspector's supervisor review a violation, the District Manager has full discretion to recommend a special assessment.

Completion of a Special Assessment Review (SAR) Form, MSHA Form 7000-32, is mandatory for any violation submitted for special assessment. SARs must describe the facts and circumstances justifying the recommendation for a special assessment. An SAR package (copies of inspector notes, conference worksheets, sketches or photographs, relevant portions of required plans, accident reports or memoranda and other information that would assist the Office of Assessments in determining an appropriate civil penalty) will be included with each citation or order of withdrawal. In

fatal accident cases, the MSHA Legal Identity Form must also be included with the SAR package.

All SARs and applicable citations and/or orders of withdrawal shall be reviewed by the respective Administrator's Office prior to their submission to the Office of Assessments. Once that review is completed, the SAR package will be forwarded to the appropriate Office of Assessments for processing. District offices should **not** mark citations and orders recommended for special assessment assessment-ready. The Office of Assessments will mark these citations and orders assessment-ready in MSIS upon receipt from the district office. District offices shall review the *Assessable Violations Not Marked Report (R119 Report)* to ensure citations and orders of withdrawal recommended for special assessment are received and marked assessment-ready by the Assessments Office. The Office of Assessments will review each recommendation for special assessment and make the final decision, conferring with the Coal or Metal and Nonmetal Mine Safety and Health program areas as necessary.

The following matrix is intended to assist MSHA personnel in determining whether a violation is required to be special assessed or reviewed for special assessment. Violations involving personal liability under Section 110(c) and discrimination under Section 105(c) of the Mine Act were intentionally omitted as they are not recommended for assessment by the District Manager.

***Types of Violations Requiring Submission of
Special Assessment Review (SAR) Form - MSHA Form 7000-32***

<i>Category</i>	<i>Negligence Evaluation</i>				
	<i>None</i>	<i>Low</i>	<i>Moderate</i>	<i>High</i>	<i>Reckless Disregard</i>
Fatality/Serious Injury	Yes	Yes	Yes	Yes	Yes
Flagrant Violations*	N/A	N/A	N/A	Yes	Yes
Part 50.10 Immediate Notification Violations* 1) Death of an individual at a mine 2) Injury of an individual at the mine which has a reasonable potential to cause death 3) Entrapment of an individual at the mine which has a reasonable potential to cause death	Yes	Yes	Yes	Yes	Yes
110(b) Daily Penalty for Failure to Abate*	Yes	Yes	Yes	Yes	Yes
Smoking or Smoking Materials Violations Cited to Miners*	Yes	Yes	Yes	Yes	Yes
*Special assessment required					

Petition for Modification or Pre-penalty Notice of Contest

All citations and orders of withdrawal pending the outcome of an application for a Petition for Modification or Pre-penalty Notice of Contest will be assessed a regular or special assessment in the interim and should be forwarded to the appropriate Office of

Assessments as described in the applicable section above. Should a decision be made in favor of the mine operator, the penalty for that citation and/or order of withdrawal will be eliminated.

Background

On March 22, 2007, MSHA published revised civil penalty regulations in 30 C.F.R. Part 100 implementing the civil penalty provisions of the MINER Act as well as increasing penalties under the regular assessment provision in Section 100.3. When it published the new civil penalty regulations, MSHA noted that the new penalty schedules under the regular assessment provision would provide an appropriate penalty for most violations. Section 100.5 continues to provide for a special assessment of any violation that MSHA believes should not be processed under the regular assessment provision. However, the list of eight specific categories of violations that were required to be reviewed for special assessment is no longer included in 30 C.F.R. Part 100.

Authority

Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §801 et seq and 30 C.F.R. Part 100

Filing Instructions

This policy letter should be filed behind the tab marked "Program Policy Letters" at the back of Volume III of the Program Policy Manual.

Internet Availability

This bulletin may be viewed on the Internet by accessing MSHA's home page (<http://www.msha.gov>), choosing "Compliance Info" and then select "Program Policy Letters."

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