

## GENERAL PROCEDURES

Effective Date: 1/15/2022

### 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 \$148 and \$79,428. 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	\$148
61 - 139 Points	Penalty Conversion Table from Table 14, 30 CFR 100.3(g)
140 or more Points	\$79,428

(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 \$1,569 per penalty point up to a maximum of \$291,234 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	\$80,997	175	\$134,341	209	\$187,684	243	\$241,028
142	\$82,566	176	\$135,909	210	\$189,253	244	\$242,597
143	\$84,135	177	\$137,478	211	\$190,822	245	\$244,166
144	\$85,704	178	\$139,047	212	\$192,391	246	\$245,735
145	\$87,273	179	\$140,616	213	\$193,960	247	\$247,304
146	\$88,842	180	\$142,185	214	\$195,529	248	\$248,872
147	\$90,411	181	\$143,754	215	\$197,098	249	\$250,441
148	\$91,979	182	\$145,323	216	\$198,667	250	\$252,010
149	\$93,548	183	\$146,892	217	\$200,236	251	\$253,579

150	\$95,117	184	\$148,461	218	\$201,805	252	\$255,148
151	\$96,686	185	\$150,030	219	\$203,373	253	\$256,717
152	\$98,255	186	\$151,599	220	\$204,942	254	\$258,286
153	\$99,824	187	\$153,168	221	\$206,511	255	\$259,855
154	\$101,393	188	\$154,737	222	\$208,080	256	\$261,424
155	\$102,962	189	\$156,306	223	\$209,649	257	\$262,993
156	\$104,531	190	\$157,875	224	\$211,218	258	\$264,562
157	\$106,100	191	\$159,443	225	\$212,787	259	\$266,131
158	\$107,669	192	\$161,012	226	\$214,356	260	\$267,700
159	\$109,238	193	\$162,581	227	\$215,925	261	\$269,269
160	\$110,807	194	\$164,150	228	\$217,494	262	\$270,837
161	\$112,376	195	\$165,719	229	\$219,063	263	\$272,406
162	\$113,944	196	\$167,288	230	\$220,632	264	\$273,975
163	\$115,513	197	\$168,857	231	\$222,201	265	\$275,544
164	\$117,082	198	\$170,426	232	\$223,770	266	\$277,113
165	\$118,651	199	\$171,995	233	\$225,338	267	\$278,682
166	\$120,220	200	\$173,564	234	\$226,907	268	\$280,251
167	\$121,789	201	\$175,133	235	\$228,476	269	\$281,820
168	\$123,358	202	\$176,702	236	\$230,045	270	\$283,389
169	\$124,927	203	\$178,271	237	\$231,614	271	\$284,958
170	\$126,496	204	\$179,840	238	\$233,183	272	\$286,527
171	\$128,065	205	\$181,408	239	\$234,752	273	\$288,096
172	\$129,634	206	\$182,977	240	\$236,321	274	\$289,665
173	\$131,203	207	\$184,546	241	\$237,890	275	\$291,234
174	\$132,772	208	\$186,115	242	\$239,459		

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

The Office of Assessments (OA) may adjust the computed target penalty amount by +/- 25% within the penalty range of \$148 minimum and \$79,428 maximum (\$291,234 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>Severity of ACTUAL Injury or Illness (Permanently Disabling)</b>	<b>Special Assessment Penalty Points</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>Gravity - Persons Potentially Affected</b>	<b>Special Assessment Penalty Points</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 \$2,648 and the minimum for any order issued under Section 104(d)(2) of the Mine Act is \$5,293.

## **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 \$8,605 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 \$6,620, the maximum is \$79,428.