

## GENERAL PROCEDURES

Effective Date: 1/15/2023

### 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 \$159 and \$85,580. 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	\$159
61 - 139 Points	Penalty Conversion Table from Table 14, 30 CFR 100.3(g)
140 or more Points	\$85,580

(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 \$1,690 per penalty point up to a maximum of \$313,790 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	\$87,270	175	\$144,745	209	\$202,220	243	\$259,695
142	\$88,961	176	\$146,436	210	\$203,911	244	\$261,386
143	\$90,651	177	\$148,126	211	\$205,601	245	\$263,076
144	\$92,342	178	\$149,817	212	\$207,292	246	\$264,767
145	\$94,032	179	\$151,507	213	\$208,982	247	\$266,457
146	\$95,723	180	\$153,198	214	\$210,673	248	\$268,148
147	\$97,413	181	\$154,888	215	\$212,363	249	\$269,838
148	\$99,104	182	\$156,579	216	\$214,054	250	\$271,529
149	\$100,794	183	\$158,269	217	\$215,744	251	\$273,219

150	\$102,484	184	\$159,959	218	\$217,434	252	\$274,909
151	\$104,175	185	\$161,650	219	\$219,125	253	\$276,600
152	\$105,865	186	\$163,340	220	\$220,815	254	\$278,290
153	\$107,556	187	\$165,031	221	\$222,506	255	\$279,981
154	\$109,246	188	\$166,721	222	\$224,196	256	\$281,671
155	\$110,937	189	\$168,412	223	\$225,887	257	\$283,362
156	\$112,627	190	\$170,102	224	\$227,577	258	\$285,052
157	\$114,317	191	\$171,792	225	\$229,267	259	\$286,742
158	\$116,008	192	\$173,483	226	\$230,958	260	\$288,433
159	\$117,698	193	\$175,173	227	\$232,648	261	\$290,123
160	\$119,389	194	\$176,864	228	\$234,339	262	\$291,814
161	\$121,079	195	\$178,554	229	\$236,029	263	\$293,504
162	\$122,770	196	\$180,245	230	\$237,720	264	\$295,195
163	\$124,460	197	\$181,935	231	\$239,410	265	\$296,885
164	\$126,151	198	\$183,626	232	\$241,101	266	\$298,576
165	\$127,841	199	\$185,316	233	\$242,791	267	\$300,266
166	\$129,531	200	\$187,006	234	\$244,481	268	\$301,956
167	\$131,222	201	\$188,697	235	\$246,172	269	\$303,647
168	\$132,912	202	\$190,387	236	\$247,862	270	\$305,337
169	\$134,603	203	\$192,078	237	\$249,553	271	\$307,028
170	\$136,293	204	\$193,768	238	\$251,243	272	\$308,718
171	\$137,984	205	\$195,459	239	\$252,934	273	\$310,409
172	\$139,674	206	\$197,149	240	\$254,624	274	\$312,099
173	\$141,365	207	\$198,840	241	\$256,315	275	\$313,790
174	\$143,055	208	\$200,530	242	\$258,005		

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

The Office of Assessments (OA) may adjust the computed target penalty amount by +/- 25% within the penalty range of \$159 minimum and \$85,580 maximum (\$313,790 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 \$2,853 and the minimum for any order issued under Section 104(d)(2) of the Mine Act is \$5,703.

## **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 \$9,271 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 \$7,133, the maximum is \$85,580.