

GENERAL PROCEDURES

Annual Inflation Adjustments for 2018

The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (2015 Inflation Adjustment Act) requires the Mine Safety and Health Administration (MSHA) to annually adjust for inflation the civil monetary penalties assessed or enforced in its regulations no later than January 15 of each year. The table below outlines MSHA's annual adjustments to its civil monetary penalties assessed in 30 CFR Part 100, pursuant to the 2015 Inflation Adjustment Act, effective January 18, 2018.

30 CFR Part 100	Mine Act Section	Description	Existing Value	New Value
100.3(a)(1)		Regular Penalty Maximum	\$69,417	\$70,834
100.3(g)		Regular Penalty Range	\$129 - \$69,417	\$132 - \$70,834
100.4(a)	104(d)(1)	Minimum Penalties	\$2,314	\$2,361
100.4(b)	104(d)(2)	Minimum Penalties	\$4,627	\$4,721
100.4(c)	103(j)	Failure to provide timely notification (minimum)	\$5,785	\$5,903
		Failure to provide timely notification (maximum)	\$69,417	\$70,834
100.5(c)	110(g)	Special Assessment Penalty Maximum (daily)	\$7,520	\$7,673
100.5(d)		Smoking or Smoking Materials (each occurrence)	\$318	\$324
100.5(e)		Special Assessment Penalty Maximum (flagrant)	\$254,530	\$259,725

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 \$132 and \$70,834. The table below summarizes the penalty point and dollar assessment ranges for non-flagrant special assessments.

Total Number of Special Assessment Penalty Points	Proposed Target Penalty
< 61 Points	\$132
61 - 139 Points	Penalty Conversion Table from Table XIV 30 CFR 100.3(g)
140 or more Points	\$70,834

(Also see Table XIV-Penalty Conversion Table, in 30 CFR 100.3
<http://www.msha.gov/30cfr/100.3.htm>)

For violations that are designated as flagrant, the target penalty increases by \$1,399 per penalty point up to a maximum of \$259,725 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.

Special Assessment Penalty Conversion Table for Flagrant Violations							
Penalty Points	Dollar Amount	Penalty Points	Dollar Amount	Penalty Points	Dollar Amount	Penalty Points	Dollar Amount
<=141	\$72,233	175	\$119,806	209	\$167,378	243	\$214,951
142	\$73,632	176	\$121,205	210	\$168,777	244	\$216,350
143	\$75,032	177	\$122,604	211	\$170,177	245	\$217,749
144	\$76,431	178	\$124,003	212	\$171,576	246	\$219,148
145	\$77,830	179	\$125,403	213	\$172,975	247	\$220,548
146	\$79,229	180	\$126,802	214	\$174,374	248	\$221,947
147	\$80,628	181	\$128,201	215	\$175,773	249	\$223,346
148	\$82,028	182	\$129,600	216	\$177,173	250	\$224,745
149	\$83,427	183	\$130,999	217	\$178,572	251	\$226,144
150	\$84,826	184	\$132,398	218	\$179,971	252	\$227,544
151	\$86,225	185	\$133,798	219	\$181,370	253	\$228,943
152	\$87,624	186	\$135,197	220	\$182,769	254	\$230,342
153	\$89,024	187	\$136,596	221	\$184,169	255	\$231,741

154	\$90,423	188	\$137,995	222	\$185,568	256	\$233,140
155	\$91,822	189	\$139,394	223	\$186,967	257	\$234,540
156	\$93,221	190	\$140,794	224	\$188,366	258	\$235,939
157	\$94,620	191	\$142,193	225	\$189,765	259	\$237,338
158	\$96,019	192	\$143,592	226	\$191,165	260	\$238,737
159	\$97,419	193	\$144,991	227	\$192,564	261	\$240,136
160	\$98,818	194	\$146,390	228	\$193,963	262	\$241,535
161	\$100,217	195	\$147,790	229	\$195,362	263	\$242,935
162	\$101,616	196	\$149,189	230	\$196,761	264	\$244,334
163	\$103,015	197	\$150,588	231	\$198,161	265	\$245,733
164	\$104,415	198	\$151,987	232	\$199,560	266	\$247,132
165	\$105,814	199	\$153,386	233	\$200,959	267	\$248,531
166	\$107,213	200	\$154,786	234	\$202,358	268	\$249,931
167	\$108,612	201	\$156,185	235	\$203,757	269	\$251,330
168	\$110,011	202	\$157,584	236	\$205,156	270	\$252,729
169	\$111,411	203	\$158,983	237	\$206,556	271	\$254,128
170	\$112,810	204	\$160,382	238	\$207,955	272	\$255,527
171	\$114,209	205	\$161,782	239	\$209,354	273	\$256,927
172	\$115,608	206	\$163,181	240	\$210,753	274	\$258,326
173	\$117,007	207	\$164,580	241	\$212,152	275	\$259,725
174	\$118,407	208	\$165,979	242	\$213,552		

2. Special Assessment Penalty Adjustments

The Office of Assessments (OA) may adjust the computed target penalty amount by +/- 25% within the penalty range of \$132 minimum and \$70,834 maximum (\$259,725 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.

ASSIGNMENT OF SPECIAL ASSESSMENT PENALTY POINTS

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.

Recently, the OA has re-evaluated its assignment of special assessment penalty points for violations relating to some of the statutory criteria and additional

procedures previously mentioned. It determined that a reduction in penalty point values for select criteria was in order, effectively reducing the monetary value of civil penalties assessed processed for special assessments. The revised penalty point reductions are outlined in section 4 below.

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.

- Special Assessment Penalty Points for Size

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 <http://www.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 measured 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:

<i>Gravity - Likelihood of Occurrence</i>	<i>Special Assessment Penalty Points</i>
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:

<i>Gravity - Likelihood of Occurrence</i>	<i>Existing Value</i>	<i>New Value</i>
No Likelihood	0	0
Unlikely	17	15
Reasonably Likely	37	35
Highly Likely	47	45
Occurred	55	55

MSHA assigns the following special assessment penalty points for a violation contributing to an accident with injury or a flagrant violation:

<i>Gravity - Likelihood of Occurrence</i>	<i>Existing Value</i>	<i>New Value</i>
No Likelihood	0	0
Unlikely	20	15
Reasonably Likely	40	35
Highly Likely	50	45
Occurred	60	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:

<i>Gravity - Severity of Injury or Illness</i>	<i>Special Assessment Penalty Points</i>
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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:

<i>Gravity – Severity of Injury or Illness</i>	<i>Existing Value</i>	<i>New Value</i>
No Lost Workdays	0	0
Lost Workdays	13	10
Permanently Disabling	23	15
Fatal	27	25

MSHA assigns the following special assessment penalty points for severity of expected injury or illness for violations contributing to an accident with injury:

<i>Gravity – Severity of Injury or Illness</i>	<i>Existing Value</i>	<i>New Value</i>
No Lost Workdays	0	0
Lost Workdays	15	10
Permanently Disabling	25	20
Fatal	35	30

MSHA assigns the following special assessment penalty points for all flagrant violations:

<i>Gravity - Severity of Injury or Illness</i>	<i>Special Assessment Penalty Points</i>
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.

Severity of ACTUAL Injury or Illness (Permanently Disabling)	Existing Value	New Value
Lost Workdays or Restricted Duty	5	2
Partial - to one limb or organ	10	5
Full - to one limb or organ	12	7
Full or Partial - to multiple limbs or organs, or to torso, neck, or head	15	10
Fatal	20	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:

Gravity - Persons Potentially Affected (Flagrant, Fatal, or Serious Injury)	Special Assessment Penalty Points
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 \$2,361 and the minimum for any order issued under Section 104(d)(2) of the Mine Act is \$4,721.

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 \$7,673 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 \$5,903, the maximum is \$70,834.