

GENERAL PROCEDURES

Effective Date: 1/23/2019

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 \$135 and \$72,620. The table below summarizes the penalty point and dollar assessment ranges for non-flagrant special assessments.

<i>Total Number of Special Assessment Penalty Points</i>	<i>Proposed Target Penalty</i>
60 or fewer Points	\$135
61 - 139 Points	Penalty Conversion Table from Table XIV 30 CFR 100.3(g)
140 or more Points	\$72,620

(Also see Table XIV-Penalty Conversion Table, in 30 CFR 100.3
<https://www.msha.gov/regulations/standards-regulations>)

For violations that are designated as flagrant, the target penalty increases by \$1,434 per penalty point up to a maximum of \$266,275 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.

<i>Special Assessment Penalty Conversion Table for Flagrant Violations</i>							
Penalty Points	Dollar Amount	Penalty Points	Dollar Amount	Penalty Points	Dollar Amount	Penalty Points	Dollar Amount
141	\$74,054	175	\$122,827	209	\$171,599	243	\$220,371
142	\$75,489	176	\$124,261	210	\$173,034	244	\$221,806
143	\$76,923	177	\$125,696	211	\$174,468	245	\$223,240
144	\$78,358	178	\$127,130	212	\$175,903	246	\$224,675
145	\$79,792	179	\$128,565	213	\$177,337	247	\$226,109
146	\$81,227	180	\$129,999	214	\$178,772	248	\$227,544
147	\$82,661	181	\$131,434	215	\$180,206	249	\$228,978
148	\$84,096	182	\$132,868	216	\$181,640	250	\$230,413
149	\$85,530	183	\$134,303	217	\$183,075	251	\$231,847

150	\$86,965	184	\$135,737	218	\$184,509	252	\$233,282
151	\$88,399	185	\$137,172	219	\$185,944	253	\$234,716
152	\$89,834	186	\$138,606	220	\$187,378	254	\$236,151
153	\$91,268	187	\$140,041	221	\$188,813	255	\$237,585
154	\$92,703	188	\$141,475	222	\$190,247	256	\$239,020
155	\$94,137	189	\$142,910	223	\$191,682	257	\$240,454
156	\$95,572	190	\$144,344	224	\$193,116	258	\$241,889
157	\$97,006	191	\$145,778	225	\$194,551	259	\$243,323
158	\$98,441	192	\$147,213	226	\$195,985	260	\$244,758
159	\$99,875	193	\$148,647	227	\$197,420	261	\$246,192
160	\$101,310	194	\$150,082	228	\$198,854	262	\$247,627
161	\$102,744	195	\$151,516	229	\$200,289	263	\$249,061
162	\$104,179	196	\$152,951	230	\$201,723	264	\$250,496
163	\$105,613	197	\$154,385	231	\$203,158	265	\$251,930
164	\$107,048	198	\$155,820	232	\$204,592	266	\$253,364
165	\$108,482	199	\$157,254	233	\$206,027	267	\$254,799
166	\$109,916	200	\$158,689	234	\$207,461	268	\$256,233
167	\$111,351	201	\$160,123	235	\$208,896	269	\$257,668
168	\$112,785	202	\$161,558	236	\$210,330	270	\$259,102
169	\$114,220	203	\$162,992	237	\$211,765	271	\$260,537
170	\$115,654	204	\$164,427	238	\$213,199	272	\$261,971
171	\$117,089	205	\$165,861	239	\$214,634	273	\$263,406
172	\$118,523	206	\$167,296	240	\$216,068	274	\$264,840
173	\$119,958	207	\$168,730	241	\$217,502	275	\$266,275
174	\$121,392	208	\$170,165	242	\$218,937		

2. Special Assessment Penalty Adjustments

The Office of Assessments (OA) may adjust the computed target penalty amount by +/- 25% within the penalty range of \$135 minimum and \$72,620 maximum (\$266,275 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.

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://www.msha.gov/microstrategy>.

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:

<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>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 an accident with injury or a flagrant violation:

<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

(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>
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>Special Assessment Penalty Points</i>
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:

<i>Gravity – Severity of Injury or Illness</i>	<i>Special Assessment Penalty Points</i>
No Lost Workdays	0
Lost Workdays	10
Permanently Disabling	20
Fatal	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)	Special Assessment Penalty Points
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:

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 \$2,421 and the minimum for any order issued under Section 104(d)(2) of the Mine Act is \$4,840.

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 \$7,867 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 \$6,052, the maximum is \$72,620.