

March 27, 2018

Re: **MSHA Seeking Comments to Regulations to Repeal, Replace or Modify / in compliance with Executive Order 13777, U. S. MSHA**

Criteria and Procedures for Assessment of Civil Penalties, 30 CFR Part 100

***Background***

CCC Group is an industrial contractor that performs construction and maintenance work in over 30 different surface mine properties per year with more than 1 million manhours in both metal/non-metal and coal facilities, throughout the United States, annually. Independent contractors are required to operate using a single Contractor ID for all activities on mine property. The existing assessment structure in 30 CFR Part 100 unfairly penalizes large contractors that work a large number of manhours in multiple mines.

***Penalty Points – History of Violations***

For independent contractors, penalty points are assigned on the basis of:

The total number of violations issued during the preceding 15-month period at all mines.  
*(Refer to Part 100 Table VII-History of Previous Violations)*

Contractors that work at a large number of mines certainly incur a larger number of inspections per year. Even a small number of violations over each inspection can result in a relatively high overall history of previous violations at all mines. Violations are accrued for contractors at all mines regardless of the commodity being mined. This means violations are totaled for violations of both metal/nonmetal (30 CFR part 56) and coal mine properties (30 CFR Part 77). A large contractor can incur as many if not more inspection days as an operator over a 15-month period. It hardly seems equitable or even reasonable that the penalty points assigned to contractors are based on violations issued at different types of mines throughout the country, with different inspectors, using different MSHA regulations, while performing different types of work, in different industries, using different equipment, with different local and project management and with a different workforce. A more equitable system of determining violation history for independent contractors needs to be established.

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### ***Penalty Points – Size of Independent Contractor***

For independent contractors, penalty points are assigned on the basis of:

Total number of manhours worked at all mines. (*Refer to Part 100 Table V*)

A coal mine company would have to produce in excess of 12 million tons of coal under the existing rule to incur the same penalty points for size as an independent contractor that works a total of only 1 million manhours at all mines.

A Metal/Nonmetal mine company would have to work a total of 15 million manhours under the existing rule to incur the same penalty points for size as an independent contractor that works a total of only 1 million manhours at all mines.

MSHA has mistakenly associated the size of independent contractors with manhours. Why should an independent contractor working 15 times less manhours than a mine operator receive the same number of penalty points? 1 million manhours equates to less than 400 workers averaging 50 hours per week. Many construction projects and maintenance crews working on mine property will average more than 50 hours per week. A more equitable system of determining size for independent contractors needs to be established.

### ***History of Previous Violations***

MSHA has also established a History of Previous Violations against independent contractors, again, assessing all violations at all mines. Mine operator history points are totaled by the number of repeat violations per inspection day for each individual mine over a 15 month time period. History points also include Non-S&S citations, raising the total assessed penalty for even minor infractions. Certain standards are vague in their definition and are used at the discretion of the inspector to issue citations for a wide variety of alleged violations. One example is 30 CFR 56.14100(b) which is used to issue citations on everything from electrical and hand tools, equipment, rigging, PPE, mobile equipment and machinery. As such the Repeat Violations Penalty now becomes used to assess additional penalty points for the number of times a particular standard is cited rather than against a specific re-occurring hazard.

When contesting citations, when the operator and MSHA's representative have agreed to reduce the Gravity and/or Severity of the citation MSHA currently is only willing to offer a small percentage reduction in the penalty amount instead of re-calculating the penalty amount to reflect the changes to the citation. If MSHA is willing to reduce the Gravity and/or Severity of the citation, they should also be willing to recalculate the citation to reflect the changes to the citation.

If MSHA is truly interested in refining the system and improving miner safety, MSHA should consider using a Negotiated Rulemaking Advisory Committee (C-DAC) similar to what OSHA used when developing the recent update for Safety Standards for Cranes and Derricks *29CFR 1926 Subpart CC*. MSHA should consult with stakeholders in the mining industry in the development of protective standards to ensure that new rules make sense.

By using a consensus committee made up of mine operators, labor representatives as well as MSHA personnel and other industry experts to develop the standard, it would better represent the principles of the industry groups that would be affected by the new standard. It would also emphasize cooperative partnerships with employers and workers, common sense, plain language protective standards focusing on the reduction of injury and illness rates rather than the number of inspections, citations and penalties.

MSHA should also incorporate the existing OSHA 1926 construction standards for construction activities on mine property. This would provide a current, detailed set of regulations that are relevant to the specific work being performed.

The current regulations in 30 CFR part 56 and 30 CFR part 77, both surface mine standards, do not adequately address construction activities, hazards and industry standards, and they are totally up to the inspectors opinion of what constitutes a violation of the regulation as well as the gravity and severity. How can something be in compliance with the OSHA Construction Standards and industry practice, but be a violation of MSHA regulations? This does not make sense, and can be confusing for the contractor and the workers as well.

CCC Group believes that our employees are our most important asset and that their safety is our greatest responsibility. We share MSHA's goal of preventing injuries. We do however feel that contractors are unfairly held to a different standard for assigning penalties and assessments than the mine operators.

We appreciate the opportunity to provide comment, please contact us if additional information is needed on this or other safety related matters.

Respectfully Submitted,



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