

Civil Penalty Provisions *(Effective April 23, 2007)*

This is an overview of 30 CFR Part 100, Criteria and Procedures for Proposed Assessment of Civil Penalties that became effective on April 23, 2007.

The rule implemented procedures regarding the civil penalty provisions of the Mine Improvement and New Emergency Response Act of 2006, also known as the MINER Act, signed by the President on June 15, 2006. The MINER Act contains three provisions related to civil penalties:

- **Immediate Notification** - establishes a penalty of at least \$5,000 and up to \$60,000 where an operator fails to notify MSHA within 15 minutes of an accident where a death, or injury or entrapment which has a reasonable potential to cause death, has occurred.
- **Unwarrantable Failure** - Sets a minimum penalty of \$2,000 for any citation or order issued as an unwarrantable failure under section 104(d)(1) of the Mine Act and a minimum penalty of \$4,000 for any order issued under section 104(d)(2).
- **Flagrant Violations** - Establishes a maximum civil penalty of \$220,000 for "flagrant violations".

The penalty provisions in the MINER Act became effective on June 15, 2006, when the Act was signed. In addition, the rule provides for a general increase in civil penalties for violations. It is applicable to all mines and contractors. The scope and major provisions of the rule include:

- **Increased penalties:** Increases civil penalties overall, targeting the more severe health and safety violations.
- **Repeat violations:** Adds a new provision to increase penalties for operators who repeatedly violate the same MSHA standards.
- **Single penalty:** No longer applies. Non-significant and substantial (non-S&S) violations formerly processed as \$60 single penalty are now processed as regular formula assessments.
- **Special assessments:** Removes the list of specific categories for special assessment. The current rule retains MSHA's authority to specially assess penalties for violations, as appropriate.
- **Health and safety conferences:** Provides 10 days for safety and health conference requests (no change from the previous rule) but now requires that requests be in writing and contain a brief statement why each citation or order should be conferenced.

The following is a section-by-section synopsis of 30 CFR Part 100.

100.3 Determination of penalty amount; regular assessment.

(a) General.

Includes language recognizing that flagrant violations, assessed under 100.5(e), may be assessed up to \$220,000.

(b) The appropriateness of the penalty to the size of the business of the operator charged.

Maximum penalty points of 25 for size of mine and controller.

(c) History of previous violations.

This section includes two components: total number of violations and the number of repeat violations of the same standard. The time period for determining history is 15 months and is based on the number of citations and orders that became final orders of the Federal Mine Safety and Health Review Commission (Commission) during the 15 month period.

(c)(1) Total number of violations.

The maximum penalty points for this criterion is 25 points. Operators who have a minimum of 10 violations that became final orders of the Commission during the 15-month period are assigned penalty points based on the total number of Violations Per Inspection Day (VPID). For independent contractors, penalty points are assigned on the basis of the total number of violations at all mines at which the contractors have worked during the 15-month period.

(c)(2) Repeat violations of the same standard.

This aspect of the history criterion accounts for a maximum of 20 penalty points. An operator who has at least six repeat violations of the same citable provision of a standard that became final orders of the Commission in the 15-month period preceding the occurrence of the violation receives repeat violation penalty points. These points are assigned based on the number of repeat violations per inspection day (RPID).

For independent contractors, penalty points are assigned on the basis of the number of violations of the same citable provision of a standard in a preceding 15-month period at all mines at which the contractor has worked.

VIOLATIONS PER INSPECTION DAY (VPID)- For operators, assessment history is based on the number of Violations Per Inspection Day (VPID) during the 15 months preceding the date the violation occurred. If the operator's ownership of the mine is less than 15 months, the history period is adjusted to include only that portion of the 15 months that the operator is at the mine.

The 15-month period used to calculate history is 15 months prior to the date

the violation occurred. The only exception is if the day of the month 15 months prior does not exist (i.e. the day is the 29th, 30th, or 31st). In that case, the last day of that month is used. For operators, VPID is calculated by adding the violation count, calculating the inspection day count (see below), and then dividing the violation total by the inspection day total. Only violations that became final orders of the Commission in the 15-month period are included in the operator's history of previous violations.

Inspection days are derived by totaling the MSHA on-site inspection hours entered by Authorized Representatives of the Secretary (AR) for certain inspection activities and task codes and dividing by five (see table below for types of activities that are included). A remainder amount greater than zero increases the count by one. All of the inspectors' time at the mine site is included when calculating inspection days. Travel time to and from the mines is not included. A detailed explanation of how violations per inspection day (VPID) and repeat violations per inspection day (RPID) are calculated is located at {link to History of Previous Violations.doc}

CONTRACTOR VIOLATION HISTORY - For independent contractors, the Contractor Violations in History Period (CVHP) is derived using the same 15-month period as for operators but includes violations issued to the contractor at all mines at which the contractor has worked during the 15-month period. Both VPID and CVHP are converted to penalty points using the respective tables in 30 CFR 100.3. {insert link to penalty tables}

REPEAT VIOLATIONS PER INSPECTION DAY - For operators, Repeat Violations Per Inspection Day (RPID) is calculated by dividing the number of repeat violations of the same citable provision of a standard by the number of inspection days in the 15-month period described above. If a Section of the Mine Act is cited in lieu of a 30 CFR cite, then VPID violations citing that Section of the Mine Act are counted. If the number of violations used in the VPID calculation is less than 10 or there are fewer than 6 repeat violations of the same standard no RPID points are assigned.

The following list shows the types of MSHA inspection activities that are counted in the operators' inspection day counts. MSHA Supervisor inspection time is counted if the supervisor indicates on-site inspection time at a mine. Inspector Trainee hours are not counted.

- E01 Regular Safety and Health Inspection
- E02 103(j) Spot Inspection
- E03 103(g) Written Notification Hazard Complaint Inspection
- E04 Verbal Hazard Complaint Inspection
- E06 Fatal Accident Investigation
- E07 Non-Fatal Accident Investigation
- E08 Non-Injury Accident Investigation
- E15 Compliance Follow-up Inspection

E16 Spot Inspection
E17 Special Emphasis Programs
E18 Shaft, Slope or Major Construction Spot Inspection
E19 Electrical Technical Investigation
E20 Roof Control Technical Investigation
E21 Ventilation Technical Investigation
E22 Health Technical Investigation
E23 Impoundment Spot Inspection
E24 Other Technical Compliance Investigations
E25 Part 50 Audit
E27 Attempted Inspection (Denial of Entry)
E28 Mine Idle Activity
E33 Non-Chargeable Accident Investigation

(d) Negligence.

Penalty points for negligence increase as the degree of negligence increases, reflecting MSHA's intent to target operators who exhibit an increasing lack of commitment to, and disregard for, miner safety and health. Moderate Negligence is assigned 20 points; High Negligence is assigned 35 points; and Reckless Disregard is assigned 50 points.

(e) Gravity.

The maximum penalty points for Gravity is 88 points. Increased points for gravity are directed at operators whose mines experience the more serious mine safety and health hazards.

Gravity - Likelihood.

Penalty points for Likelihood of Occurrence are:

- No Likelihood is zero points;
- Unlikely is 10 points;
- Reasonably Likely is 30 points;
- Highly Likely is 40 points; and
- Occurred is 50 points.

Gravity - Severity.

Penalty points for Severity of Injury or Illness if the Event Occurred or Were to Occur are:

- No Lost Work Days is zero points;
- Lost Work Days or Restricted Duty is 5 points;
- Permanently Disabling is 10 points; and
- Fatal is 20 points

Gravity - Persons Potentially Affected.

The gravity points for the number of persons potentially affected increase gradually as the number of persons actually affected increases. The maximum penalty points is 18 points for this criterion.

(f) Demonstrated good faith of the operator in abating the violation.

This criterion allows for a reduction in the penalty amount if the operator has abated the violation within the time set by the inspector. The allowable penalty reduction is 10%. Withdrawal orders and citations/orders citing sections of the Act are not eligible for the good faith reduction.

(g) Penalty Conversion Table

The penalty conversion table that is used to convert total penalty points to dollar amounts ranges from 60 or fewer points to 144 or more points. The minimum regular assessment is \$112. However, considering the good faith reduction allowed in paragraph (f) above, an operator may receive regular assessments as low as \$100 for total points of 60 or less. The penalty points associated with the maximum regular assessment of \$70,000 is 144 or more penalty points.

(h) The effect of the penalty on the operator's ability to continue in business.

This provision allows mine operators to request a reduction in civil penalties if the penalties affect the operators' ability to remain in business.

100.4 Unwarrantable failure.

Section 100.4 implements Section 8(a)(1)(B) of the MINER Act related to minimum unwarrantable failure penalties. The minimum civil penalty for a 104(d)(1) citation or order is \$2,000 and the minimum penalty for a 104(d)(2) order is \$4,000.

100.5 Determination of penalty: Special assessment.

(a) This provision states MSHA's authority to issue special assessments when warranted. A detailed explanation of MSHA's policy as it relates to special assessments is located at <http://www.msha.gov/regs/complian/ppls/2008/PPL08-III-2.asp>

100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences. This provision requires that all requests for a safety and health conference be in writing and include a brief statement as to why each citation/order should be conferenced. This provision will help parties requesting a conference to focus on the issues that will be discussed. A concise statement about the reasons each citation/order should be conferenced will give the District Manager necessary information before the conference and will help the parties have a more meaningful and effective conference. A detailed explanation of MSHA's Part 100 safety and health conference procedures is located at <http://www.msha.gov/regs/complian/PIB/2009/pib09-05.asp>

100.7 Notice of proposed penalty; notice of contest.

This provision explains how MSHA delivers civil penalties. MSHA currently provides a form that lists violations being assessed, instructions for paying or contesting assessments, and MSHA contact information to facilitate an operator's request for a hearing with each proposed assessment. MSHA immediately advises the Commission and the Office of the Solicitor of a contest.

Note: MSHA is in the process of revising the form that notifies mine operators and independent contractors of civil penalties for citations. The new Proposed Assessment and Statement of Account forms are currently scheduled for release in late 2009. The revised Statements are part of the agency's ongoing efforts to improve its civil penalty processing.

The updated statements will include information on new and revised assessments, payments applied, payments past due, and Federal Mine Safety and Health Review Commission (FMSHRC) decisions rendered since the last statement. In addition, the status of all civil penalties assessed, paid or contested since the last statement will be listed. These statements will replace the demand letters for payment of delinquent debt that the agency formerly sent out.

A significant addition to the new statement will be the incorporation of a Remittance Coupon that, when included with civil penalty payments, will help ensure the payments are applied to the appropriate fines. Also, a Notice of Contest Rights and Instructions will be provided in the statements.

100.8 Service.

This provision explains mine operators' requirements to keep MSHA apprised of the correct address to which civil penalties should be sent and that civil penalties sent to the address provided constitutes service of the proposed penalties.