

GENERAL PROCEDURES

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 \$200 and \$70,000. 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>
<61 points	\$200
61 – 143 points	Penalty Conversion Table from Table XIV 30 CFR 100.3(g)
144 or more points	\$70,000

(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 \$1,387 per penalty point up to 263 points, then by \$1,388 per point up to a maximum of \$242,000 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
<=152	\$71,387	183	\$114,384	214	\$157,381	245	\$200,378
153	\$72,774	184	\$115,771	215	\$158,768	246	\$201,765
154	\$74,161	185	\$117,158	216	\$160,155	247	\$203,152
155	\$75,548	186	\$118,545	217	\$161,542	248	\$204,539
156	\$76,935	187	\$119,932	218	\$162,929	249	\$205,926
157	\$78,322	188	\$121,319	219	\$164,316	250	\$207,313
158	\$79,709	189	\$122,706	220	\$165,703	251	\$208,700
159	\$81,096	190	\$124,093	221	\$167,090	252	\$210,087
160	\$82,483	191	\$125,480	222	\$168,477	253	\$211,474
161	\$83,870	192	\$126,867	223	\$169,864	254	\$212,861
162	\$85,257	193	\$128,254	224	\$171,251	255	\$214,248
163	\$86,644	194	\$129,641	225	\$172,638	256	\$215,635
164	\$88,031	195	\$131,028	226	\$174,025	257	\$217,022
165	\$89,418	196	\$132,415	227	\$175,412	258	\$218,409

166	\$90,805	197	\$133,802	228	\$176,799	259	\$219,796
167	\$92,192	198	\$135,189	229	\$178,186	260	\$221,183
168	\$93,579	199	\$136,576	230	\$179,573	261	\$222,570
169	\$94,966	200	\$137,963	231	\$180,960	262	\$223,957
170	\$96,353	201	\$139,350	232	\$182,347	263	\$225,344
171	\$97,740	202	\$140,737	233	\$183,734	264	\$226,732
172	\$99,127	203	\$142,124	234	\$185,121	265	\$228,120
173	\$100,514	204	\$143,511	235	\$186,508	266	\$229,508
174	\$101,901	205	\$144,898	236	\$187,895	267	\$230,896
175	\$103,288	206	\$146,285	237	\$189,282	268	\$232,284
176	\$104,675	207	\$147,672	238	\$190,669	269	\$233,672
177	\$106,062	208	\$149,059	239	\$192,056	270	\$235,060
178	\$107,449	209	\$150,446	240	\$193,443	271	\$236,448
179	\$108,836	210	\$151,833	241	\$194,830	272	\$237,836
180	\$110,223	211	\$153,220	242	\$196,217	273	\$239,224
181	\$111,610	212	\$154,607	243	\$197,604	274	\$240,612
182	\$112,997	213	\$155,994	244	\$198,991	275	\$242,000

2. Special Assessment Penalty Adjustments

The assessor may adjust the computed target penalty amount by $\pm 25\%$ or $\pm \$200$, whichever is greater, within the penalty range of \$200 minimum and \$70,000 maximum (\$242,000 maximum for flagrant violations). This flexibility is necessary to account for the unique facts and circumstances surrounding a violation. The assessor must base the adjustment on specific information provided by enforcement personnel in the citation/order, in the special assessment review form, or in other documents or phone conversations.

In rare cases, the assessor may propose penalties outside the $\pm 25\%$ range. In these cases, the assessor must document the facts and circumstances supporting a penalty outside the normal range in the "Narrative Findings for a Special Assessment" provided to the operator.

ASSIGNMENT OF SPECIAL ASSESSMENT PENALTY POINTS

MSHA assigns special assessment penalty points to most violations for the five statutory criteria as described below. Other procedures are used for computing special assessments of 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 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 § 100.3(b), Tables I through V.

- **Added Special Assessment Penalty Points for Violations Contributing to a Fatal or Permanently Disabling Injury Accident and Flagrant Violations**

For mine operators, when the violation contributes to a fatal or permanently disabling injury or is a flagrant violation, MSHA doubles the controller size points. However, the total controller and mine size points for these serious accidents and flagrant violations will not exceed 25 points. For independent contractors no additional points are added.

2. Violation History

Mine operators are assigned penalty points from Tables VI and VIII in §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 §100.3(c), Tables VII and IX, 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 Commission 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 all special assessments, MSHA assigns the regular assessment penalty points for Violation History from Tables VI and VII. For special assessments MSHA assigns the regular assessment penalty points for Repeat Violation History from Tables VIII and IX, except for flagrant violations. For flagrant violations, MSHA assigns special assessment 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 in Table X, § 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 a non-injury accident;
- 8 points for High or Reckless Disregard (RD) negligence for a violation contributing to a non-injury accident;
- 10 points for a violation contributing to a lost workdays, restricted duty, permanently disabling or fatal accident.

MSHA assigns a total 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. 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 \$2,000 and the minimum for any order issued under Section 104(d)(2) of the Mine Act is \$4,000.

5. 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.

(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	53

MSHA assigns the following special assessment penalty points for a violation contributing to a non-injury accident:

<i>Gravity - Likelihood of Occurrence</i>	<i>Non-Injury, No Lost Workdays Accident</i>
No Likelihood	0
Unlikely	17
Reasonably Likely	37
Highly Likely	47
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	20
Reasonably Likely	40
Highly Likely	50
Occurred	60

(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	20
Fatal	25

MSHA assigns the following special assessment penalty points for a violation contributing to a non-injury accident:

<i>Gravity - Severity of injury or Illness</i>	<i>Non-Injury, No Lost Workdays Accident</i>
No Lost Workdays	0
Lost Workdays	13
Permanently Disabling	23
Fatal	27

MSHA assigns the following special assessment penalty points for a violation 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	15
Permanently Disabling	25
Fatal	35

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 20 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				
Lost Workdays or Restricted Duty	Permanently Disabling			Fatal
	Partial - to one limb or organ	Full - to one limb or organ	Full or Partial – to multiple limbs or organs, or to torso, neck, or head	
5	10	12	15	20

(c) Additional Special Assessment Penalty Points for Number of Persons POTENTIALLY Affected

MSHA adds 2 special assessment penalty points to the regular assessment penalty points in Table XIII in 100.3(e) for violations not contributing to an accident.

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

<i>Gravity - Persons Potentially Affected Flagrant, Fatal or Serious Injury</i>	<i>Special Assessment Points</i>
0	0
1	10
2	11
3	12
4	13
5	14
6	15
7	16
8	17
9	18
>=10	25

6. Imminent Danger

MSHA adds 2 special assessment penalty points for violations contributing to an imminent danger situation.

7. 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, 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 \$7,500 for each day the citation remains unabated.

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 another 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 \$5,000, the maximum is \$65,000.