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**From:** Gary Klatt <garyk@cccgroupinc.com>  
**Sent:** Friday, November 21, 2014 2:06 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** Comments Docket MSHA2014-009 RIN 1219-AB72  
**Attachments:** Docket MSHA2014-009.pdf

Please find the attached comments for Docket MSHA 2014-009 on the proposed rule change of 30 CFR Part 100 "Criteria and Procedures for Assessment of Civil Penalties"

A copy of this has been also been delivered to the following address

Mine Safety and Health Administration  
Office of Standards, Regulations, and Variances  
1100 Wilson Boulevard, Room 2350  
Arlington, Va. 22209-3939

Re: Docket: MSHA2014-009, RIN 1219-AB72  
Criteria and Procedures for Assessment of Civil Penalties, 30 CFR Part 100

Regards,

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2014 NOV 21 P 3:00

November 19, 2014

Mine Safety and Health Administration  
Office of Standards, Regulations, and Variances  
1100 Wilson Boulevard, Room 2350  
Arlington, Va. 22209-3939

Re: Docket: MSHA2014-009, RIN 1219-AB72  
Criteria and Procedures for Assessment of Civil Penalties, 30 CFR Part 100

With the Proposed Rule changes to 30 CFR Part 100, MSHA is intending to streamline the assessment and collection process. Under MSHA's own admission, the total penalties will remain generally the same. The initial modification to 30 CFR Part 100, which occurred in 2007, resulted not only in a substantial increase in penalty amounts, but also in the amount of citations contested.

### ***Background***

CCC Group, Inc. 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. The proposed changes to the current rule will not really improve this disparity.

### ***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 – Appendix 1)

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.

### ***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 Tables I through V (Appendix 2)*)

A coal mine company would have to produce in excess of 12 million tons of coal under the existing rule or 4 million tons of coal under the proposed 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 or produce an annual tonnage greater than 3 million tons *and* work over 5 million manhours under the proposed 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 manhour 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.

### ***Negligence***

MSHA has proposed revising the negligence criteria to increase accountability for operators who either knew or should have known about hazards at their mines, and reduces the number of negligence criteria from five to three. The new categories are *Not Negligent*, *Negligent*, and *Reckless Disregard*. By making this change, MSHA has now made the determination that there are no mitigating circumstances and has removed the operator's ability to present mitigating circumstances. It has been and will remain up to the inspector's discretion as to the level of negligence, however, I doubt very seriously that there will be very many citations issued *Not Negligent*. The proposed rule leaves operators basically two categories, Negligent or Reckless Disregard.

### ***Gravity Likelihood***

MSHA proposes to reduce the categories of *Likelihood* of occurrence from five to three. This actually makes sense, as I doubt there were ever very many citations issued that had *No-Likelihood* of occurrence. It has been and will remain up to the inspector's discretion as to the likelihood of occurrence, however, in the absence of an injury or illness, there are now only two choices.

### ***Gravity – Severity***

MSHA proposes to reduce the severity categories from four to three by eliminating the *Permanently Disabling* category because it is difficult for the inspector to anticipate. We would also argue that it is often questionable for the inspector to determine the severity of an injury based upon a condition that the inspector believes is a violation of the regulations. We have seen cases where *Lost Workdays or Restricted Duty* or *Fatal* is marked as a matter of practice, not on the actual conditions present when the citation was issued.

Another proposed change to 30 CFR Part 100 is an incentive to offer mine operators an additional 20% reduction in the citation fine amount if the operator agrees not to contest either the penalty amount or the citation. MSHA claims that this will result in more prompt abatement of citations. Abatement or termination of the citation is required regardless, and has nothing to do with whether a citation is contested.

What MSHA should consider is that when the citation is contested, and the operator and MSHA's representative have agreed to reduce the Gravity and/or Severity of the citation, the penalty amount be automatically recalculated. 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.

While this proposed change in the standard focuses on a reduction of points for the operator, the resulting penalty conversion table is just a shift in the curve and does nothing to improve miner safety. Some citations may see a slight reduction while others could see substantial increase in penalty amounts.

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 numbers of inspections, citations and penalties.

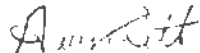
MSHA should also incorporate the existing OSHA 1926 construction standards for construction activities on mine property. This would provide a current, detailed set of regulations that are relevant to the specific work being performed.

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 confounding for the contractor and the workers as well.

CCC Group, Inc. 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. The proposed changes will more likely make those penalties more severe.

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

Respectfully Submitted,



**Gary Klatt CSP**

EHS Manager

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PART 100 TABLE VI—HISTORY OF PREVIOUS VIOLATIONS—MINE OPERATORS\*

Overall history: number of violations per inspection day	Existing penalty points (out of maximum 208 points)	Proposed penalty points (out of maximum 100 points)
0 to 0.3	0	0
>0.3 to 0.5	2	2
>0.5 to 0.7	5	5
>0.7 to 0.9	8	8
>0.9 to 1.1	10	10
>1.1 to 1.3	12	11
>1.3 to 1.5	14	12
>1.5 to 1.7	18	13
>1.7 to 1.9	19	14
>1.9 to 2.1	22	15
>2.1	25	16

\* Under the proposal, MSHA would assign zero points when a mine has either fewer than 10 violations that became final orders or 10 or fewer inspection days over the 15-month period preceding the occurrence date of the violation being assessed.

PART 100 TABLE VII—HISTORY OF PREVIOUS VIOLATIONS—INDEPENDENT CONTRACTORS\*

Existing rule		Proposed rule	
Overall history: number of violations at all mines	Penalty points (out of maximum 208 points)	Overall history number of violations at all mines	Penalty points (out of maximum 100 points)
0 to 5	0	0 to 5	0
6	1	6-7	1
7	2		
8	3	8-9	2
9	4		
10	5	10-11	3
11	6		
12	7	12-13	4
13	8		
14	9	14-15	5
15	10		
16	11	16-17	6
17	12		
18	13	18-19	7
19	14		
20	15	20-21	8
21	16		
22	17	22-23	9
23	18		
24	19	24	10
25	20	25	11
26	21	26	12
27	22	27	13
28	23	28	14
29	24	29	15
>29	25	>29	16

PART 100 TABLE I—SIZE OF COAL MINE

Existing rule		Proposed rule	
Annual tonnage of mine ( $\times 1,000$ )	Penalty points (out of maximum 208 points)	Annual tonnage of mine ( $\times 1,000$ )	Penalty points (out of maximum 100 points)
0 to 7.5	1	0 to 50	1
>7.5 to 10	2		
>10 to 15	3		
>15 to 20	4		
>20 to 30	5		
>30 to 50	6	>50 to 500	2
>50 to 70	7		
>70 to 100	8		
>100 to 200	9		
>200 to 300	10		
>300 to 500	11	>500 to 1,000	3
>500 to 700	12		
>700 to 1,000	13		
>1,000 to 2,000	14	>1,000	4
>2,000	15		

PART 100 TABLE II—SIZE OF CONTROLLING ENTITY—COAL MINE

Existing rule		Proposed rule	
Annual tonnage ( $\times 1,000$ )	Penalty points (out of maximum 208 points)	Annual tonnage ( $\times 1,000$ )	Penalty points (out of maximum 100 points)
0 to 50	1	0 to 200	1
>50 to 100	2		
>100 to 200	3		
>200 to 300	4		
>300 to 500	5	>200 to 700	2
>500 to 700	6		
>700 to 1,000	7	>700 to 3,000	3
>1,000 to 2,000	8		
>2,000 to 10,000	9	>3,000	4
>10,000	10		

PART 100 TABLE III—SIZE OF METAL/NONMETAL MINE

Existing rule		Proposed rule	
Annual hours worked at mine ( $\times 1,000$ )	Penalty points (out of maximum 208 points)	Annual tonnage of mine ( $\times 1,000$ )	Penalty points (out of maximum 100 points)
0 to 5	0	0 to 5	0
>5 to 10	1		
>10 to 20	2		
>20 to 30	3		
>30 to 50	4		
>50 to 100	5	>5 to 200	1
>100 to 200	6		
>200 to 300	7		
>300 to 500	8		
>500 to 700	9		
>700 to 1,000	10	>200 to 1,500	2
>1,000 to 1,500	11		
>1,500 to 2,000	12		
>2,000 to 3,000	13		
>3,000 to 5,000	14		
>5,000	15	>3,000	4

PART 100 TABLE IV—SIZE OF CONTROLLING ENTITY—METAL/NONMETAL MINE

Existing rule		Proposed rule	
Annual hours worked ( $\times 1,000$ )	Penalty points (out of maximum 208 points)	Annual hours worked ( $\times 1,000$ )	Penalty points (out of maximum 100 points)
0 to 50	0	0 to 50	0
>50 to 100	1		
>100 to 200	2	>50 to 300	1
>200 to 300	3		
>300 to 500	4		
>500 to 1,000	5	>300 to 2,000	2
>1,000 to 2,000	6		
>2,000 to 3,000	7	>2,000 to 5,000	3
>3,000 to 5,000	8		
>5,000 to 10,000	9	>5,000	4
>10,000	10		

PART 100 TABLE V—SIZE OF INDEPENDENT CONTRACTOR

Existing rule		Proposed rule	
Annual hours worked at all mines ( $\times 1,000$ )	Penalty points (out of maximum 208 points)	Annual hours worked at all mines ( $\times 1,000$ )	Penalty points (out of maximum 100 points)
0 to 5	0	0 to 5	0
>5 to 7	2	>5 to 10	1
>7 to 10	4		
>10 to 20	6	>10 to 30	2
>20 to 30	8		
>30 to 50	10	>30 to 70	3
>50 to 70	12		
>70 to 100	14	>70 to 200	4
>100 to 200	16		
>200 to 300	18	>200 to 500	5
>300 to 500	20		
>500 to 700	22	>500 to 700	6
>700 to 1,000	24		
>1,000	25	>700 to 1,000	7
		>1,000	8