

RIN 1219-AB72 30 CFR Part 100 Criteria and Procedures for Assessment of Civil Penalties

With the introduction of the Proposed Rule on Civil Penalty Assessments, MSHA states the purpose is to implement a system with a reduction of points and incorporate intentions to place greater unpleasant emphasis on violations of serious hazards. A byproduct of the aforementioned would be a reduction in citations. MSHA's effort in assessing the factual effects that these changes would have on the number of citations issued appears to be non-existent. The proposed rule even indicates that much of the research that MSHA relied upon was based on assumptions made by the agency.

Good Faith 20% penalty reduction will be offered if the operator:

- does not contest the citation,
- promptly abates the citation
- pays the fine before any citation or order becomes final.

This would be in addition to the 10% good faith penalty reduction that is already offered. $20\% + 10\% = 30\%$ reduction sounds attractive, but operators would have to approach this very cautiously. I agree with the 10% "good faith" for prompt abatement of violations. The problem lies in 20% discount.

I feel that this "eye candy" reduction would cause some operators to grab it up, not realizing that the citations will still count toward his POV and mine history! The operator will feel he is doing well until the day he gets that 6th repeat of the same standard in past two years accompanied by that awaking increased penalty assessment, plus the POV bonus! I think the reduction is like cheese on the mouse trap. Looks good, taste good till the mouse nibbles too much then Whack! With this said I think conference/ contest activities will increase.

To the point, reduction of choices for the field inspector in categories, I believe, will increase the overall severity of the citations. I have never seen and don't believe I will ever see a citation written as "none" negligence. The field inspector will be nudged closer to the Reckless Disregard option. Where did the Mitigating circumstances go!? The Gravity section will be similar, I have never seen a citation written with "0" or "no" person affected. I feel the field inspector when writing a citation will not consider "no person" affected. Logically this condition could not exist. Regulations are written to protect miners from hazards. How could there be a violation of a regulation that does not affect anyone, when in fact the regulation was created to protect miners? Again the inspector will be nudged toward higher enforcement.

Let's look again at the elimination of mitigating circumstances. I believe this is a grave mistake to eliminate the inspectors, District CLR and ALJ ability to consider mitigation circumstances when either writing the citation, or during the litigation process. The operator loses a defensive tool that is often used in the first conference which directly results in the final penalty assessment being greater than those under present system.

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I have issues and concerns with Section IV part 2. I feel if the proposed rule is enacted it will limit the Commission's power to modify penalties at a formal hearing before an Administrative Law Judge. The reduction of choices in the different categories, (e.g. Negligence & Gravity), presents the Commission with fewer options for reductions which is currently a very important part of the hearing process. The proposed rule will greatly demise the power of the Commission to be an **independent** reviewer of the citations and his ability to consider the evidence presented to determine the final outcome of the penalties.

MSHA claims impact inspections and use of the POV has resulted in reduced citations, reduced fatalities, and a safer mining industry. Assuming the facts, as presented by MSHA, are true, the current criteria for Assessment of Civil Penalty must be working effectively. Therefore, based on these facts, I feel there is **not** a need for a new criteria as proposed by RIN 1219-AB72.

Thank you,