

# PUBLIC SUBMISSION

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

**Comment On:** MSHA-2014-0009-0046

Criteria and Procedures for Assessment of Civil Penalties

**Document:** MSHA-2014-0009-0079

Comment from Larry Hammond, Ingram Concrete LLC

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## Submitter Information

**Name:** Larry Hammond

**Organization:** Ingram Concrete LLC

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## General Comment

See attached file(s)

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## Attachments

Blog

AB72-COMM-39

I would like to talk about the new Proposed Civil Penalty Rule that MSHA has published. The intended purpose of this change is to place a greater emphasis on more serious safety and health regulations that will result in the improvement of safety and health for miners. MSHA is proposing several changes in the Civil Penalty Regulation CFR 30 part 100.

According to MSHA this proposed rule would “simplify the penalty criteria used in writing citations and orders, which would reduce the number of decisions made by inspectors, promote consistency, objectivity and efficiency, and result in fewer areas of dispute and earlier resolution of enforcement issues.”

Penalty points would decrease from 208 points to only 100 points, while MSHA shows that there would be a decrease in points for each of the established criteria (Operator’s history of violations, Negligence of the operator, Gravity of the violation, size of operator’s operation, demonstrated good faith of the operator and effect of the penalty on the operator’s ability to continue in business), the percentage of the points would increase in some categories, but not in all.

Under the existing regulations, there are 5 categories under Negligence (None, Low, Moderate, High Negligence, and Reckless Disregard). The proposed rule would have only three categories (Not Negligent, Negligent, and Reckless Disregard). The definition of Not Negligent did not change. It is “the operator exercised diligence and could not have known of the volatile condition or practice”. MSHA defines Negligent as “the operator knew or should have known about the volatile condition or practice”. The definition of Reckless Disregard did not change. It is “the operator displayed conduct which exhibits the absence of the slightest degree of care”. You see what is missing is mitigating circumstances. Now the inspector cannot consider any mitigating circumstances when he is determining what category to pick. Thus the operator loses a great defensive tool that we can use in a 1<sup>st</sup> discovery conference. Also under the new rule more weight would be given towards the final penalty assessment than under the present system.

On the Gravity Category, several changes are being proposed:

1. Persons affected will be reduced to NO ( no miners affected, which I don’t know of hardly any citation that would be written where no one is affected) and YES ( this would range from 1 miner to pick a number.) The penalty points would be only 1 toward the 100 total.
2. The five options that are presently offered under “A” will be reduced to three (Unlikely, Reasonably Likely and Occurred). It is very possible that this reduction could result in more S & S citations be issued, which will not achieve what MSHA has stated about overall lowering of penalties.
3. Permanently Disabling in “B” will be eliminated. Although the total weight of the gravity designations will decrease overall, this rule will increase the relative weight of the severity of injury designations that will have a greater impact on penalty points.

Also MSHA is offering a 20% “good faith” penalty reduction if the operator will not contest the citation, promptly abates the cited citation(which should already be done ASAP ), and pays the fine before any citation of order becomes final. This will be in addition of the 10% good faith that is

already offered. I feel that this 20% reduction will cause some operators to take it and not realize that the citations will still count toward the POV and history of the operator. In reading some of the comments already made concerning this proposed rule this could very easily be considered a bribe to not contest a citation that could be conferenced.

The big concern of this proposed rule (section IV part 2), will limit the Commission's ability to modify penalties at hearing. With the reduction of choices in the different categories, the Commission has fewer options to consider and this is a very important part of the hearing process that is the operators right. This proposed rule will undermine the power of the Commission to be an independent reviewer of the citations and to use the evidence that is presented in the hearing to determine the final outcome of the penalties.