

MSHA Part 100 Overview

Arkansas

Mine Safety & Health Conference

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MSHA Part 100 Overview

- Reformulates the process of assigning points to arrive at an assessment.
- Adds a provision to an operator's history addressing "repeat violations".
- Eliminates the \$60 single penalty assessment for "non-S&S violations".
- Increases the dollar amount of each point in the conversion tables.
- Maximum \$60,000 for civil penalty (no change)
- Minimum of \$2000 and \$4000 for Unwarrantable failure and Withdrawal orders respectively.
- Failure to notify MSHA within 15 minutes of a fatality or injury that has reasonable potential to be a fatality from \$5,000 to \$60,000.
- Makes all violations subject to "special assessment."

MSHA Part 100

- MSHA new “Miner Act” Part 100 provisions and assessments
 - Graduated assessment scale for citations based on:
 - Size of operation (hours worked)
 - Size of controlling entity (hours worked)
 - Degree of Negligence
 - Gravity (severity, likelihood of event, # persons potentially affected)
 - Citation History
 - History of repeat violations

MSHA Part 100 Size of Operation

Annual Hours Worked	Penalty Pts.
Size of Individual Mine	
0 to 5,000	0
Over 5,000 to 10,000	1
Over 50,000 to 100,000	5
Over 100,000 to 200,000	6
Over 200,000 to 300,000	7
Over 300,000 to 500,000	8
Over 500,000 to 700,000	9
Size of Controlling Entity	
Over 3,000,000 to 5,000,000	8

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DEGREE OF NEGLIGENCE PENALTY POINTS

	Points
- No negligence	0
- Low Negligence	10
- Moderate Negligence	20
- High Negligence	35
- Reckless Disregard	50

Increase from 25 to 50 maximum penalty points

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GRAVITY PENALTY POINTS

<u>Likelihood of Occurrence</u>	<u>Points</u>
- No Likelihood	0
- Unlikely	10
- Reasonably Likely	30
- Highly Likely	40
- Occurred	50

<u>Severity</u>	<u>Points</u>
- No Lost work Days	0
- Lost or Restricted	5
- Permanently Disabling	10
- Fatal	20

<u>Number of Persons Affected</u>	<u>Points</u>
- 0	0
- 1	1
- 5	5
- 10 or more	18

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VIOLATION HISTORY PENALTY POINTS

VPID = # assessed violations (15 mos.) Divided by Total inspection days (15 Mos.)

- Penalty not used for mines with less than 10 citations for the 15 month period.
- Only assessed violations that have been paid or finally adjudicated
- Inspection day = full or partial day at mine site per inspector.
- Have the authority to take past violations into consideration, (prior to promulgation) but will pay close attention to retroactive circumstances that result in unfair penalty increases.
- Using 2005 data average penalty points for M/NM was 7.6 points.
- Maximum of 25 penalty points versus 20 points old rule.

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REPEAT VIOLATION PENALTY POINTS (New)

RPID= Repeat Violations Per Inspection Day

- Violation of the same standard
- Penalty not used for mines with less than 6 repeat citations for the 15 month period.
- Only assessed violations that have been paid or finally adjudicated
- Inspection day = full or partial day at mine site.
- Still no commitment retroactivity
- Using 2005 data 698 of 10,227 mines had at least 6 violations or more
- Maximum of 20 penalty points

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- **Flagrant Violations may be assessed a maximum civil penalty of \$220,000.**
- **Flagrant Definition.... “a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.”**

PART 100 Examples

- Elevated Platform Housekeeping Issue



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Example #1: Non S&S Equivalent

Old Rule:

\$60 single penalty assessment

New Rule:

Size of operation (hours worked)	7
Size of controlling entity (hours worked)	8
Degree of Negligence (Low)	10
Gravity: Unlikely, LTA, 2 persons affected	10-5-2
Citation History	12
History of repeat violations	<u>0</u>
Total Points	57 points or \$112* or \$100 w/GFR

***MSHA projects, under the final rule that 59% of all violations will receive the minimum penalty of \$112 or \$100 with good faith reduction. This compares with 72% of all citations that received the \$60 single penalty assessment under the old rule.**

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Example #2: S&S Equivalent

New Rule:

Size of operation (hours worked)	7
Size of controlling entity (hours worked)	8
Degree of Negligence (Moderate)	20
Gravity: Reas. likely, LTA, 2 persons affected	30-5-2
Citation History	12
History of repeat violations	<u>0</u>
Total Points	84 points or \$764*

***MSHA estimates M/NM cement facilities average penalty assessment is going to increase from \$220 to \$481; a 119% increase.**

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Example #3: S&S High Negligence/Highly Likely/Fatal

New Rule:

Size of operation (hours worked)	7
Size of controlling entity (hours worked)	8
Degree of Negligence (High)	35
Gravity: Highly likely, Fatal, 5 persons affected	40-20-5
Citation History	12
History of repeat violations	<u>0</u>
Total Points	127 points or \$23,825

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Penalty Conversion Table

Points	Penalty (\$)
60 or Fewer	\$112
70	\$249
80	\$555
90	\$1,235
100	\$2,748
110	\$6,115
120	\$13,609
130	\$30,288
140 or more	\$60,000

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NEXT STEPS:

- Thoroughly review all citations under New Part 100 rule
 - Know your facility History (track on an ongoing basis)
- Management Training on proper conduct during MSHA Inspections
 - Opening and closing conferences
 - Accompanying Inspectors
 - What to say - What not to say
 - Questions to ask inspectors
 - Importance of good communications
 - Required records
- Improved relationship building with District Offices
 - H&S
 - Operations
- Improve Workplace Examination Program
 - Documentation
 - Follow up on deficiencies
 - Accountability

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Questions?