



DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

[Docket No. MSHA-2014-0009]

RIN 1219-AB72

Criteria and Procedures for Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period; close of record.

SUMMARY: This document corrects § 100.3(e) in a proposed rule published in the *Federal Register* on July 31, 2014, regarding criteria and procedures for assessment of civil penalties. This correction also clarifies selected proposed provisions in the preamble to facilitate public understanding and to obtain more useful responses.

DATES: Post-hearing comments must be received or postmarked by midnight Eastern Standard Time on March 31, 2015.

ADDRESSES: Submit comments, informational materials, and requests to speak, identified by RIN 1219-AB72 or Docket No. MSHA-2014-0009, by one of the following methods:

- *Federal E-Rulemaking Portal:*
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-Mail:* zzMSHA-comments@dol.gov. Include RIN 1219-AB72 or Docket No. MSHA-2014-0009 in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.
- *Hand Delivery or Courier:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.
- *Fax:* 202-693-9441.

Instructions: All submissions must include "MSHA" and "RIN 1219-AB72" or "Docket No. MSHA-2014-0009." Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change to <http://www.regulations.gov> and <http://www.msha.gov/currentcomments.asp>, including any personal information provided.

Docket: For access to the docket to read comments received, go to <http://www.regulations.gov> or <http://www.msha.gov/currentcomments.asp>. To read background documents, go to <http://www.regulations.gov>. Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 21st floor.

E-mail notification: To subscribe to receive an e-mail notification when MSHA publishes rules, program information, instructions, and policy, in the *Federal Register*, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at mccconnell.sheila.a@dol.gov (e-mail); 202-693-9440 (voice); or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 2014, MSHA published a proposed rule (79 FR 44494) to amend its civil penalty regulation to simplify the criteria, which will promote consistency, objectivity, and efficiency in the proposed assessment of

civil penalties and facilitate the resolution of enforcement issues. The proposal would place a greater emphasis on the more serious safety and health conditions and provide improved safety and health for miners. This proposed rule involves changes to MSHA's regular assessment penalty formula, including changes to the citation/order form [MSHA Form 7000-3]. The comment period was scheduled to close on September 29, 2014; however in response to requests from the public for additional time to prepare comments, MSHA extended the comment period until December 3, 2014.

On November 7, 2014 (79 FR 66345), MSHA announced two public hearings which were held on December 4, 2014, in Arlington, VA, and on December 9, 2014 in Denver, Colorado. The post-hearing comment period was extended until January 9, 2015.

In response to requests from the public, MSHA announced on December 31, 2014 (79 FR 78749) two additional public hearings on the proposed rule. The hearings will be held on February 5, 2015 in Birmingham, Alabama, and on February 12, 2015 in Chicago, Illinois. The post-hearing comment period and rulemaking record will close on March 31, 2015.

II. Request for Comments and Close of Record

MSHA clarifies that under the Negligence criterion, MSHA proposed to combine the existing categories of Low, Moderate, and High Negligence into a single category of Negligent. Commenters have expressed concern that violations assessed as High Negligence under the existing rule would be assessed as Reckless Disregard under the proposed rule, resulting in higher penalties. As stated in public hearings to date, MSHA intends that determinations of Low, Moderate, and High Negligence under the existing rule would be placed in the proposed Negligent category and assigned 15 penalty points. "Negligent" would mean that the operator "knew or should have known of the violative condition or practice." The definitions of Reckless Disregard and No Negligence ("Not Negligent" in the proposal) would not change. "Reckless Disregard" would continue to mean conduct exhibiting "the absence of the slightest degree of care" and is distinguishable from the proposed definition of "Negligent." It is also distinguishable from the existing definition of "High Negligence," which is that the operator "knew or should have known of the violative condition or practice, and there are no mitigating circumstances." "Not Negligent" would continue to mean that the operator "exercised

diligence and could not have known of the violative condition or practice.”

Under the Gravity criterion for Likelihood, MSHA clarifies that the Agency proposes to combine the existing categories of No Likelihood and Unlikely to a single category of Unlikely. Violations assessed as Unlikely under the existing rule would remain Unlikely under the proposed rule, but would be assigned zero penalty points. The existing categories of Reasonably Likely and Highly Likely would be combined to a single category of Reasonably Likely in the proposed rule and assigned 14 penalty points.

MSHA is clarifying that the proposed definition of “Unlikely” should read “Condition or practice cited has little or no likelihood of causing an injury or illness.” MSHA is also clarifying that the proposed definition of “Reasonably Likely” should read “Condition or practice cited is likely to cause an injury or illness.” In addition, the proposed definition of “Occurred” should read “Condition or practice cited has caused an injury or illness.”

MSHA also would like to clarify that the Good Faith reduction in penalties would not be affected by a request for pre-assessment conferences on violations. MSHA discussed an alternative in the preamble to the proposed

rule of an additional 20 percent reduction in the penalty for Good Faith if the violation is not contested and the penalty is paid before it becomes a final order of the Commission. Under this alternative, only penalties that are either not paid within 30 days or are contested would be ineligible for the additional 20 percent Good Faith penalty reduction. MSHA clarifies that if an assessment grouping includes multiple citations and only one is not paid within 30 days or is contested, the remaining citations would be eligible for the Good Faith penalty reduction.

MSHA solicits comments from the mining community on all aspects of the proposed rule. Commenters are requested to be specific in their comments and to provide sufficient detail in your responses to enable proper Agency review and consideration. All comments must be received or postmarked by March 31, 2015.

III. Correction

In proposed rule FR Doc. 2014-17935, beginning on page 44517 in the issue of July 31, 2014, make the following corrections.

PART 100-CRITERIA AND PROCEDURES FOR ASSESSMENT OF
CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

2. Amend § 100.3 paragraph (e) by revising the first two sentences in the introductory paragraph, Table XI, and the heading for the first column in Tables XII and XIII to read as follows:

§ 100.3 Determination of penalty amount; regular assessment

(e) *Gravity*. Gravity is an evaluation of the seriousness of the violation. Gravity is determined by the likelihood of an injury or illness, the severity of the anticipated or occurred injury or illness, and whether or not persons are potentially affected by the condition or practice cited. ***

Table XI-GRAVITY: LIKELIHOOD

Likelihood of occurrence	Penalty Points
<i>Unlikely</i> : Condition or practice cited has little or no likelihood of causing an injury or illness.	0
<i>Reasonably Likely</i> : Condition or practice cited is likely to cause an injury or illness.	14
<i>Occurred</i> : Condition or practice cited has caused an injury or illness.	25

TABLE XII-GRAVITY: SEVERITY

Severity of Anticipated or Occurred Injury or	Penalty
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Illness	Points
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Table XIII-GRAVITY: PERSONS POTENTIALLY AFFECTED

Persons Potentially Affected by the Condition or Practice Cited	Penalty Points
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 Joseph A. Main,
 Assistant Secretary of Labor
 for Mine Safety and Health

Dated: February 3, 2015

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