

U.S. Department of Labor

Mine Safety and Health  
Administration

Office of Assessments

# Topics of Discussion

- Organizational Structure & Functions
- Penalty Assessment Criteria
- Types of Assessments
- Pre-Assessment Opportunities
- Collection of Civil Penalties
- Post-Assessment Opportunities
- Delinquent Debt
- Small Business Regulatory Enforcement Fairness Act of 1996
- Helpful Suggestions
- Contact Information

# Organizational Structure



# Office of the Director Functions

Oversees the overall program and management functions of the office, which include:

- Administering the assessments program pertaining to the assessment and collection of civil penalties under the Mine Act
- Administering the special investigations program pertaining to discrimination complaints filed under Section 105(c) of the Mine Act; and knowing or willful violations under Section 110(c) of the Mine Act

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# Civil Penalties & Assessment Center Functions

Oversees the program and management functions of the Civil Penalty Compliance Office and the Wilkes-Barre Assessments Center

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# Civil Penalty Compliance Office Functions

- Track status of civil penalty cases & maintain financial & case records
- Prepare cases for litigation
- Process payments
- Collect delinquent penalties

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# Wilkes-Barre Assessment Center Functions

- Process violations into regular- & single-penalty proposed assessments
- Approve Legal Identity Report submittals  
*(MSHA 2000-7 Form Instructions)*
- Conduct research & analysis on mine ownership

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# Policy, Systems & Special Assessments Office Functions

- Respond to Freedom of Information Act requests & provide violation history reports
- Process recalls & re-assessments involving civil penalties
- Administer assessment program information & administrative/management activities



# Policy, Systems & Special Assessments Office Functions

*continued*

- Specially assess violations
- Maintain assessment database management system
- Update policy & procedures under *30 CFR 100* - Criteria and Procedures for Proposed Assessment of Civil Penalties
- Conduct data analyses

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# Technical Compliance and Investigations Functions

Oversees the program and management functions of the Technical Compliance and Investigations Office.

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# Technical Compliance & Investigations Office Functions

- Oversee the investigation process for:
  - Complaints of miner discrimination
  - knowing or willful criminal violations
  - Denial of entry & injunctive cases
- Review judicial decisions

# Penalty Assessment Criteria

Operators in violation of the Federal Mine Safety and Health Act of 1977 (Mine Act) can be issued a proposed penalty assessment ranging from \$60 to \$60,000, based on the following five criteria set forth in *30 CFR 100.3*:

- Size of business
- History of operations
- Degree of negligence
- Degree of gravity
- Demonstrated good faith

# Size of Business

Determination of the size of the mine & size of controlling entity of which the mine is a part, is calculated by the previous year's:

- Tonnage produced for production coal operators
- Employee hours worked for metal & nonmetal production operators & independent contractors

# History of Violations

Determined by the total number of paid or final violations cited during a 24-month period, starting 30 months prior to the issue date of the violation which is used to calculate the:

- Number of violations per inspection day for production operators
- Average violations per year for independent contractors

# Excessive History of Violations

- Applicable to operators having greater than 2.1 violations per inspection day & independent contractors having greater than 50 violations per year
- Not applicable to mines with 10 or fewer violations
- Only applicable to 104(a) non-S&S timely-abated citations

# Degree of Negligence

Inspector's evaluation of measures taken by the operator to protect or correct conditions or practices which caused or allowed the violation to exist



# Degree of Gravity

Inspector's evaluation of the seriousness of the violation, as measured by the likelihood of the occurrence

# Demonstrated Good Faith

- Timely abatement of a violation issued for a regular assessment
- Possible adjustments to penalty amount include:
  - A reduction of 30% if violation is corrected within the time set by the inspector
  - An additional 10 penalty points if violation is not corrected within the time set by the inspector

# Types of Assessments

- Single
- Regular
- Special

# Single-Penalty Assessment

Computer-generated fixed penalty of \$60 for violations, as set forth in *30 CFR 100.4*:

- Section 104(a) non-S&S citations
- Violations corrected within time set by inspector
- No excessive history of violations

# Regular Assessment

Computer-generated penalty ranging from \$72 to \$60,000 for violations, as set forth in *30 CFR 100.4*:

- Orders, 104(d), 104(a) S&S, & 104(a) non-S&S citations not qualifying for single penalty
- Possible adjustments to penalty amount include 30% reduction if violation is abated within time set by inspector; or additional 10 penalty points if violation is not abated within time set by inspector

# Special Assessment

Individual review & determination of penalty assessment up to \$60,000 for violations, as set forth in *30 CFR 100.5*:

- Fatalities & serious injuries
- Unwarrantable failure to comply with a mandatory health & safety standard
- Operating in defiance of a closure order
- Denial of right of entry by an authorized representative

*continued*

# Special Assessment

*continued*

- Individuals liable under Section 110(c) of the Mine Act
- Imminent danger
- Acts of discrimination under Section 105(c) of the Mine Act
- Extraordinarily high negligence, gravity or other unique aggravating circumstances \*

\* **Violations that do not fall into any other special assessment categories such as multiple violations of health standards; 30 CFR Part 48; and, 30 CFR Part 50**

# Special Assessment Guidelines

A point system, *MSHA Guidelines for Special Assessment Penalties*, is an additional tool used by the Agency to compute special assessment penalties

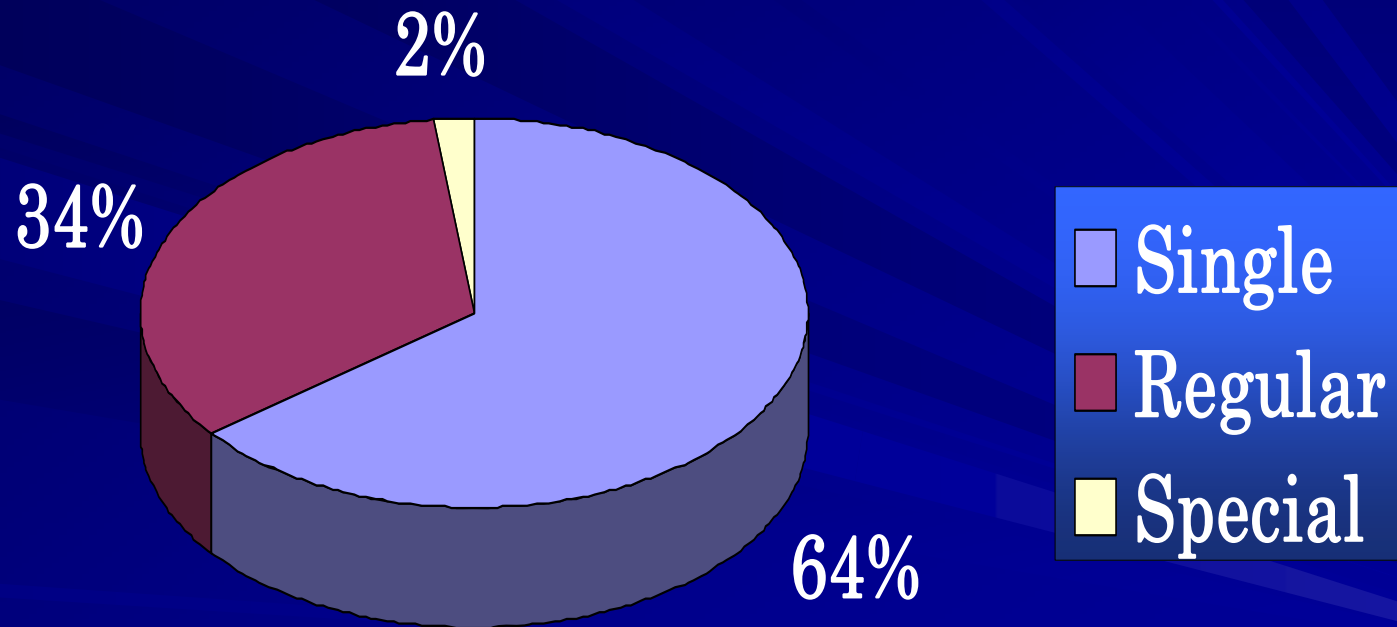


# Special Assessor's Review Criteria

In addition to the 5 assessment criteria, a special assessor reviews the following information, in order to determine a special assessment:

- Citations & orders
- Special assessment review request
- Inspector's notes
- Safety & health conference notes
- Report of investigation
- Sketches & photographs
- Relevant portions of mine plans

# 2006 Assessed Violations by Type



# 2006 Assessed Violations by Average Amount

■ Regular Assessment	\$406
■ Average special assessments:	
■ Non-accident-related	\$2,650
■ Accident-related	\$23,205
■ Director/Officer/Agent	\$814
■ Miner smoking	\$244

# Pre-Assessment Opportunities

An operator may participate in the following pre-assessment activities:

- Accompany an authorized representative during an inspection
- Attend the inspection close-out conference
- Request a safety & health conference
- File notice of contest/application for review

# Inspection Close-Out Conference

Immediately following an inspection, an informal meeting is held between the inspector & operator to:

- Discuss the conditions observed during the inspection
- Notify the operator of their right to request a safety & health conference

# Safety & Health Conference

An operator may submit additional information and/or request a safety & health conference with the district manager, as set forth in *30 CFR 100.6*:

- The request must be made through the district manager
- The request must be made within 10 days of the notification of rights to a safety & health conference

# Notice of Contest/ Application for Review

- The operator may file in writing to the Federal Mine Safety & Health Review Commission (FMSHRC) within 30 days upon receipt of the issuance of the citation or order
- Filing does not affect the enforcement process

# Collection of Civil Penalties

A notice of proposed assessment is sent by certified mail to the operator, as set forth in *30 CFR 100.7*, in which they have 30 days to either pay or contest the penalty



# Post-Assessment Opportunities

- Financial review of operator's ability to continue in business
- Civil penalty contest
- Appeal of Administrative Law Judge (ALJ) decision
- Further appeal options

# Financial Review

- It is initially presumed that the assessment will have no effect on the operator
- To apply for relief, the operator must submit a written request to the district manager within 30 days of receipt of the proposed assessment. As set forth in *30 CFR 100.3(h)*, the operator must:
  - Provide financial statements for the most recent 2-year period
  - Show how payment of the penalty will adversely affect their ability to continue in business

# Civil Penalty Contest

- The operator must file a contest in writing to MSHA's Civil Penalty Compliance Office within 30 days upon receipt of the proposed assessment, as set forth in *30 CFR 100.7*
- The penalty amount is decided by an Administrative Law Judge (ALJ) in a legal proceeding

# Appeal of ALJ Decision

- The operator or MSHA must appeal to the Federal Mine Safety & Health Review Commission (FMSHRC) within 30 days of the ALJ decision
- The case is decided by the FMSHRC in a legal proceeding

# Further Appeal Options

- U.S. Court of Appeals
- U.S. Supreme Court

# Delinquent Debt

Delinquent debt is collected by MSHA,  
Department of Treasury, & Department of  
Justice representatives

# Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Small businesses may submit comments about MSHA or other Federal agency enforcement actions by contacting:

- 1-888-REG-FAIR (1-800-734-3247)  
500 W. Madison Street, Suite 1240  
Chicago, Illinois 60661

# Helpful Suggestions

- Maintain an effective safety & health program
- Maintain a zero or low violation average
- Timely abate any violations issued
- Pay penalties on time
- Participate in pre-assessment opportunities



*For inquiries, please contact the*

# Office of Assessments

*Telephone: (202) 693-9700*

*Fax: (202) 693-9701*

*or*

*visit MSHA online at*

[www.msha.gov](http://www.msha.gov)