

## SUBCHAPTER P—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

### PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

Sec.

- 100.1 Scope and purpose.
- 100.2 Applicability.
- 100.3 Determination of penalty amount; regular assessment.
- 100.4 Determination of penalty; single penalty assessment.
- 100.5 Determination of penalty; special assessment.
- 100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.
- 100.7 Notice of proposed penalty; notice of contest.
- 100.8 Service.

AUTHORITY: 30 U.S.C. 815, 820, and 957.

SOURCE: 47 FR 22294, May 21, 1982, unless otherwise noted.

#### § 100.1 Scope and purpose.

This part sets forth the criteria and procedures for the proposed assessment of civil penalties under sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations, to maximize the incentives for mine operators to prevent and correct hazardous conditions, and to assure the prompt and efficient processing and collection of penalties.

#### § 100.2 Applicability.

The criteria and procedures contained in this part are applicable to all evaluations and proposed assessments of civil penalties for violations of the Act, and the standards and regulations promulgated pursuant to the Act. The Mine Safety and Health Administration (MSHA), United States Department of Labor, shall review each citation and order and shall make proposed assessments of civil penalties.

#### § 100.3 Determination of penalty amount; regular assessment.

(a) *General.* The operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, shall be assessed a civil penalty of not more than \$60,000. Each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. The amount of the civil penalty proposed shall be based upon the formula set forth in this section. The formula is based on the general criteria described in sections 105(b) and 110(i) of the Mine Act. These criteria are:

- (1) The appropriateness of the penalty to the size of the business of the operator charged;
- (2) The operator's history of previous violations;
- (3) Whether the operator was negligent;
- (4) The gravity of the violation;
- (5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and
- (6) The effect of the penalty on the operator's ability to continue in business.

The penalty amount in a regular case shall be determined by first assigning the appropriate number of penalty points to the violation by using the appropriate criteria and tables set forth in this section. The number of penalty points assigned for all criteria will then be totaled, and the point accumulation converted into a dollar amount by using the penalty conversion table in paragraph (g) of this section. Where appropriate, this penalty amount will be adjusted for demonstrated good faith in accordance with § 100.3(f).

(b) *The appropriateness of the penalty to the size of the operator's business.* The appropriateness of the penalty to the size of the production operator's business is calculated by using both the size of the mine cited and the size of the controlling entity of which the