



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Miners Health Safety And Training

RULE TYPE: Legislative

TITLE-SERIES: 56-12

RULE NAME: Rule Governing Assessing Health and
Safety Violation Penalties

CITE AUTHORITY: W. Va. Code 22A-1-21

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Graham Platz -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 56
LEGISLATIVE RULE
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 12
RULES GOVERNING ASSESSING HEALTH
AND SAFETY VIOLATION PENALTIES

§56-12-1. General.

1.1. Scope. -- ~~These rules establish~~ This rule establishes the procedure whereby the Office of Miners' Health, Safety and Training assesses civil monetary penalties, pursuant to W. Va. Code §22A-1-21, to those having violated the state's mine health and safety laws.

1.2. Authority. -- W. Va. Code §22A-1-21.

1.3. Filing Date. -- ~~April 10, 2014~~ _____.

1.4. Effective Date. -- ~~July 1, 2014~~ _____.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2029.

§56-12-2. Definitions.

2.1. ~~Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W. Va. Code §22A-1-2.~~ Unless the context in which a word or phrase appears requires a different meaning, all terms used in this rule that are not defined herein shall have the meanings set forth in W. Va. Code §22A-1-2.

2.2. "Director" shall mean ~~means~~ the director of the State of West Virginia Office of Miners' Health, Safety and Training.

2.3. "Knowing violation" shall mean ~~means~~ a violation occurring when:

2.3.1. An operator (or miner, for an individual violation) causes a violative condition or practice by exercising reckless and willful disregard of mandatory health and safety standards, or recklessly and willfully failed to correct an unsafe condition or practice which was known to exist; or

2.3.2. An operator refuses to comply with any order issued under W. Va. Code §§22A-1-14 or 15; or

2.3.3. An operator refuses to comply with any order issued in a final decision under ~~Chapter 22A, article 1, of the~~ W. Va. Code §22A-1-1, except for an order incorporated in a decision under W. Va. Code §§22A-1-21(a) or 22(b).

2.4. "Good faith" shall mean ~~means~~ that, in the judgment of the inspector, the operator has demonstrated extraordinary effort above and beyond that which would normally be expected to abate the violation.

2.5. "Mine health and safety laws" ~~shall mean means~~ the provisions of W. Va. Code Chapters 22 and §22A articles one, two, five and six of chapter twenty two a, and chapter twenty two of the West Virginia Code, and any rule promulgated thereunder, relating to health and safety standards.

2.6. "Independent contractor" has the same meaning as that term is defined at ~~36 CSR 20~~ W. Va. Code State R. §36-20-1 et seq.

2.7. "Annual tonnage" ~~shall mean means~~ tonnage produced in the previous calendar year, or, in the case of a mine opened or owned less than one full calendar year, the tonnage thus far produced multiplied to an annual amount based on months of operation.

§56-12-3. Assessment Procedure For Operators.

3.1. Civil monetary penalty assessments are mandatory.

3.2. The amount of a civil monetary penalty assessments will be determined based upon consideration of the following ~~five~~ 5 criteria:

3.2.1. Gravity of the violation;

3.2.2. History of previous violations;

3.2.3. Size of the business charged with a violation; ~~and~~

3.2.4. Demonstrated good faith in achieving compliance after notification of the violation-; and

3.2.5. Whether the operator was negligent.

3.3. Gravity of the violation will be evaluated by the inspector or representative of the director, and points allocated accordingly.

3.3.1. Points will be allocated in the following ~~four~~ 4 categories:

3.3.1.a. Likelihood of an occurrence of an event which the health and safety laws are intended to prevent;

3.3.1.b. The severity of the injury which might be expected to result from such an occurrence; and

3.3.1.c. The number of persons potentially affected by such an occurrence-; and

3.3.1.d. Whether the operator was negligent.

3.3.2. Points will be allocated in the following manner:

3.3.2.a. Likelihood of occurrence

- Unlikely0 points
- Reasonably likely 10 points

Occurred 20 points

3.3.2.b. Severity of injury expected

None..... 0 points
No lost work days..... 6 points
Lost/restricted work days 11 points
Permanently disabling 15 points
Fatal 20 points

3.3.2.c. Number of persons potentially affected

0 0 points
1 1 points
2 2 points
3 4 points
4 to 5 6 points
6 to 9 8 points
More than 9 10 points

3.3.2.d. Negligence

No negligence 0 points
Low negligence 10 points
Moderate negligence..... 15 points
High negligence..... 20 points

3.4. The operator's history of violations over the previous 24 months will be evaluated by the inspector or representative of the director and points allocated accordingly.

3.4.1. For mine operators, points will be calculated based upon the average number of violations per inspection day over the previous 24 months.

3.4.2. For independent contractors, points will be calculated based upon the total number of violations during the previous 24 months.

3.4.3. Points will be allocated in the following manner:

3.4.3.a. Mine operators:

Average number violations/ inspection day

0 0 points
Over 0 to 0.3 2 points
Over 0.3 to 0.5 5 points
Over 0.5 to 0.7 8 points
Over 0.7 to 0.9 11 points
Over 0.9 to 1.1 14 points
Over 1.1 to 1.3 17 points

Over 1.3 to 1.5	20 points
Over 1.5 to 1.7	22 points
Over 1.7 to 1.9	23 points
Over 1.9 to 2.1	24 points
Over 2.1.....	25 points

3.4.3.b. Independent contractors:

Total number of violations

1 to 5	2 points
6 to 10	5 points
11 to 15	8 points
16 to 20	11 points
21 to 25	14 points
26 to 30	17 points
31 to 35	20 points
36 to 40	22 points
41 to 45	23 points
46 to 50	24 points
More than 50	25 points

3.5. Size of the business charged with a violation will be evaluated by the inspector or representative of the director, and points allocated accordingly. Size of the mine will be calculated by considering the annual tonnage of the mine. Mines which have not submitted tonnage reports by the dates required by W. Va. Code §22A-2-77 will be assessed the maximum amount of ~~five (5)~~ points.

Size of Business (annual tonnage)

0 - 100,000 tons	1 point
100,001 - 500,000 tons	2 points
500,001 - 1,000,000 tons	3 points
1,000,001 - 2,000,000 tons	4 points
Over 2,000,000 tons.....	5 points

3.6. The points allocated in the manner set forth in Sections 3.3, 3.4 and 3.5, above, will be totaled, and the total number converted to a dollar amount, as per Table 1, infra.

3.7. Demonstrated good faith by the operator in achieving compliance after notification of the violation will be evaluated by the inspector or representative of the director, and the total dollar amount of the penalty may be modified accordingly.

3.7.1. If the operator fails to abate the violation within the time prescribed, and there are, in the opinion of the inspector or representative of the director, extenuating circumstances beyond the operator's control which prevent the abatement of the violation within such time, the amount of the assessment will not be affected.

3.7.2. If the operator fails to abate the violation within the prescribed time, and an order is issued pursuant to W. Va. Code §22A-1-15(b), the total dollar amount of the assessment will be increased by ~~fifteen percent (15%)~~.

3.7.3. If the operator was already working to correct the violation when discovered, or, in the judgment of the inspector, the operator has demonstrated extraordinary effort above and beyond that which would normally be expected to abate the violation, the total dollar amount of the assessment will be decreased by ~~fifteen percent (15%)~~, if the original assessment is greater than ~~sixty dollars (\$60)~~.

§56-12-4. Assessment Procedure For Knowing Violations.

4.1. In addition to any monetary assessment determined under section 3 of these rules, any operator issued a knowing violation shall be assessed ~~one (1)~~ knowing point for every ~~twenty (20)~~ civil penalty points accrued. Knowing points are converted to a monetary amount, as per the following table:

Knowing Civil Penalty Conversion Table

Civil Points	Penalty Points	Knowing Penalty
0-20	1	\$.1,000
21-40	2	\$.2,000
41-60	3	\$.3,000
61-80	4	\$.4,000
81-100	5	\$.5,000

4.2. In addition to any assessment determined under section 3 of ~~these rules~~ this rule, a subsequent knowing violation, issued to the same operator at the same operation during the same inspection within the same quarter, shall result in the assessment of ~~two (2)~~ knowing points for every ~~twenty (20)~~ civil penalty points accrued. Subsequent knowing points are converted to a monetary amount as per the following table:

Subsequent Knowing Civil Penalty Conversion Table

Civil Points	Penalty Points	Knowing Penalty
0-20	2	\$2,000
21-40	4	\$4,000
41-60	6	\$6,000
61-80	8	\$8,000
81-100	10	\$10,000

§56-12-5. Assessment Procedure For Individuals.

5.1. Any miner who knowingly violates the mine health and safety laws shall be assessed a civil penalty not to exceed ~~two hundred fifty dollars (\$250)~~ for each such occurrence.

5.2. The amount of civil monetary penalty assessments will be determined based upon consideration of ~~two~~ 2 criteria:

5.2.1. Gravity of the violation; and

5.2.2. History of prior violations.

5.3. Gravity of the violation will be evaluated by the inspector or representative of the director, and points allocated accordingly.

5.3.1. Points will be allocated in the following ~~three~~ 3 categories:

5.3.1.a. Likelihood of an occurrence of an event, which the health and safety laws are intended to prevent;

5.3.1.b. The severity of the injury which might be expected to result from such an occurrence; and

5.3.1.c. The number of persons potentially affected by such an occurrence.

5.3.2. Points will be allocated in the following manner:

5.3.2.a. Likelihood of occurrence

Unlikely 0 points
Reasonably likely..... 10 points
Occurred 20 points

5.3.2.b. Severity of injury expected

None..... 0 points
No lost work days..... 5 points
Lost/restricted work days 10 points
Permanently disabling 15 points
Fatal 20 points

5.3.2.c. Number of persons potentially affected

0 0 points
1 5 points
2 10 points
3 15 points
4 to 5 20 points
6 to 9 25 points
More than 9 30 points

5.4. The miner's history of prior violations over the previous ~~thirty-six (36)~~ months will be evaluated by the inspector or representative of the director, and points allocated accordingly. Points will be allocated in the following manner:

1 violation 15 points

2 or more violations..... 30 points

5.5. The points allocated in the manner set forth in 5.3 and 5.4, above, will be totaled, and the total number converted to a dollar amount by using the following table:

Civil Penalty Point Conversion Table For Individuals

Points	Penalty
1 to 10	\$50.00
11 to 20	100.00
21 to 30	150.00
31 to 40	175.00
41 to 50	200.00
51 to 60	225.00
61 to 70	240.00
71 to 100	250.00

**Table 1
Civil Penalty Point Conversion Table For Operators**

Points	Penalty (\$)	Points	Penalty (\$)
0 - 15	60.00	66	840.00
16 - 31	96.00	67	880.00
32	100.00	68	927.00
33	104.00	69	960.00
34	108.00	70	1000.00
35	114.00	71	1050.00
36	120.00	72	1100.00
37	126.00	73	1150.00
38	132.00	74	1333.00
39	138.00	75	1667.00
40	144.00	76	1800.00
41	152.00	77	1933.00
42	160.00	78	2067.00
43	168.00	79	2200.00
44	176.00	80	2333.00
45	184.00	81	2467.00
46	194.00	82	2600.00
47	204.00	83	2733.00
48	214.00	84	2867.00
49	224.00	85	3000.00
50	234.00	86	3133.00
51	246.00	87	3267.00
52	256.00	88	3400.00
53	266.00	89	3533.00
54	276.00	90	3667.00
55	286.00	91	3800.00
56	300.00	92	3933.00

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57	318.00	93	4067.00
58	336.00	94	4200.00
59	354.00	95	4333.00
60	372.00	96	4467.00
61	392.00	97	4600.00
62	412.00	98	4733.00
63	434.00	99	4867.00
64	456.00	100	5000.00
65	480.00		