



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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4/24/2024 11:11:18 AM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Miners Health Safety And Training TITLE-SERIES: 56-12
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Rule Governing Assessing Health and Safety
Violation Penalties
CITE STATUTORY AUTHORITY: W. Va. Code 22A-1-21

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) H.B. 4086

Section W. Va. Code 64-10-3(d) Passed On 2/29/2024 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 24, 2024

This rule shall terminate and have no further force or effect from the following date:

August 01, 2029

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

Yes

Garner Marks -- 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
RULE GOVERNING ASSESSING HEALTH
AND SAFETY VIOLATION PENALTIES**

§56-12-1. General.

1.1. Scope. -- 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 24, 2024.

1.4. Effective Date. -- April 24, 2024.

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 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 the director of the State of West Virginia Office of Miners' Health, Safety and Training.

2.3. "Knowing violation" shall mean 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 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 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 the provisions of W. Va. Code Chapters 22 and 22A 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 W. Va. Code State R. §36-20-1 *et seq.*

2.7. "Annual tonnage" shall mean 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 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;
- 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 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 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 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 15% if the original assessment is greater than \$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 1 knowing point for every 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 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 2 knowing points for every 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 \$250 for each such occurrence.

5.2. The amount of civil monetary penalty assessments will be determined based upon consideration of 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 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 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
57	318.00	93	4067.00
58	336.00	94	4200.00
59	354.00	95	4333.00
60	372.00	96	4467.00

56CSR12

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		