§ 100.5 Determination of penalty amount; special assessment.

(a) MSHA may elect to waive the regular assessment under §100.3 if it determines that conditions warrant a special assessment.

(b) When MSHA determines that a special assessment is appropriate, the proposed penalty will be based on the six criteria set forth in §100.3(a). All findings shall be in narrative form.

(c) Any operator who fails to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $7,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty of not more than $375 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than $220,000. For purposes of this section, a flagrant violation means "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury."