must be included in the LMSA application package:

(7) All documentation required by HUD Notice 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of administrative guidelines to be applied to assistance programs of the Office of Housing published on April 9, 1991 [56 FR 14436].

(8) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

(9) Disclosures and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(10) Certification and disclosure according to HUD Notice H–90–27 entitled "OMB's Guidance on New Government-wide Restrictions on Lobbying" issued April 13, 1990.

(11) Form HUD–2530, Previous Participation Certificate(s) for all principals requiring clearance under those procedures.

(12) A written certification stating that the owner will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities.

(13) Certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), implementing regulations at 49 CFR 24, and HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition.

IV. Corrections to Deficient Applications

(a) After the submission date for applications, no changes to application documents will be accepted, except for correction of technical deficiencies which do not alter the substance of the application materials. Examples include a missing certification, or missing signature. (Reasonable changes to the owner's corrective plan resulting from negotiations with the HUD Field Office during the application review period, are not governed by this section.)

(b) HUD will notify an applicant in writing, shortly after the application response deadline, of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(c) The applicant must submit corrections to the same HUD Field Office at which the original application was filed, by the official close of business on the 14th calendar day following the date of the HUD letter notifying the applicant of the deficiency. The applicant must submit the corrected document(s) with a separate written summary of all changes from the original submission.

V. Other Matters

(a) HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the activities set forth in this Notice are within the exclusion set forth in § 50.20(d), no environmental assessment is required, and no environmental finding has been prepared.

(b) Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

(c) Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA does not have potential significant impact on family, formation, maintenance, and general well-being.

(d) Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Dated: January 15, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–1721 Filed 1–23–92; 8:45 am]

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federal register

Friday
January 24, 1992

Part III

Equal Employment Opportunity Commission

29 CFR Part 1641

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60-742

Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts; Joint Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1641

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–742

Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts

AGENCY: Equal Employment Opportunity Commission; and Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Joint final rule.

SUMMARY: On July 26, 1990, the Americans with Disabilities Act of 1990 (ADA) was signed into law. Section 107(b) of the ADA requires that the Equal Employment Opportunity Commission (EEOC or Commission), the Attorney General, and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issue coordination regulations no later than January 26, 1992 setting forth procedures governing the processing of complaints that fall within the overlapping jurisdiction of both title I of the ADA and sections 503 and 504 of the Rehabilitation Act to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Pursuant to this mandate, the Commission and OFCCP are jointly publishing a new part implementing section 107(b) as it pertains to title I of the ADA and section 503 of the Rehabilitation Act of 1973. This part will be added to the rules of the Department of Labor at 41 CFR Chapter 60 as a new part 60–742, and to the rules of the Equal Employment Opportunity Commission at 29 CFR Chapter XIV as a new part 1641.

EFFECTIVE DATE: July 26, 1992.

ADDRESSES: Copies of this joint final rule are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Equal Employment Opportunity Commission, Office of Equal Employment Opportunity by calling (202) 663–4395 or 663–4398 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, Equal Employment Opportunity Commission, (202) 663–4638 (voice), (202) 663–7026 (TDD); or Annie Blackwell, Director of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, (202) 523–9430 (voice).

SUPPLEMENTARY INFORMATION:

Background

Title I of the ADA prohibits discrimination against qualified individuals with disabilities in all aspects of employment. 42 U.S.C. 12101 *et seq.* Title I of the ADA becomes effective on July 26, 1992, with respect to employers with 25 or more employees. On July 26, 1994, this coverage is extended to employers with 15 or more employees. EEOC is authorized to investigate and attempt to resolve charges of employment discrimination under the ADA.

Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. 793, requires government contractors and subcontractors to apply a policy of nondiscrimination and affirmative action in their employment of qualified individuals with a handicap. OFCCP is authorized to investigate and attempt to resolve complaints of employment discrimination under section 503.

The substantive prohibitions and coverage of title I of the ADA overlap to a significant extent with the substantive prohibitions and coverage of section 503. There is, therefore, a potential for the imposition of inconsistent or conflicting legal standards, and duplicative efforts by EEOC and OFCCP in their processing of complaints under these laws.

Pursuant to the mandate of section 107(b) of the ADA, OFCCP and EEOC are therefore promulgating this joint final rule to establish procedures for coordinating the processing of complaints that fall within the overlapping jurisdiction of these statutes.

OFCCP Processing

In brief, complaints filed with OFCCP under section 503 of the Rehabilitation Act will also be considered charges, simultaneously dual filed under the ADA, whenever the complaints also fall within the jurisdiction of the ADA. Joint filing of complaints/charges received by OFCCP under both section 503 and the ADA ensures that the aggrieved individual's rights under the ADA are preserved, including the private right to file a lawsuit.

Acting as EEOC's agent and applying consistent legal standards, OFCCP will process and resolve the ADA component of the section 503 complaint/ADA charge, except where the complaint/charge raises an issue designated to be a Priority List issue, defined as a limited number of controversial topics on which there is not yet definitive guidance as to EEOC's position, or where the complaint/charge also raises certain allegations of discrimination on the basis of race, color, religion, sex, national origin or age. OFCCP will refer complaints/charges raising Priority List issues or certain allegations of discrimination on the basis of race, color, religion, sex, national origin or age in their entirety to EEOC for processing and final resolution, provided that such complaints/charges do not include allegations of violation of affirmative action requirements under section 503. In such a situation, OFCCP will bifurcate the complaints/charges and refer only the allegations regarding Priority List issues or discrimination on the basis of race, color, religion, sex, national origin or age. OFCCP will also refer to EEOC for litigation review under the ADA any compliant/charge where a violation has been found, conciliation fails, and OFCCP declines to pursue administrative enforcement.

EEOC Processing

In brief, EEOC will refer ADA charges that are also covered by section 503 to OFCCP under two circumstances. First, ADA cause charges that also fall within the jurisdiction of section 503 and that the Commission has investigated but declines to litigate after the failure of conciliation will be referred to OFCCP for review of the file and any administrative action deemed appropriate. Second, ADA charges filed with EEOC, in which both allegations of discrimination under the ADA and violation of affirmative action requirements under section 503 are made, will be referred in their entirety to OFCCP for processing and resolution under section 503 and the ADA, unless the charges also include certain allegations of discrimination on the basis of race, color, religion, sex, national origin or age, or include allegations involving Priority List issues, or the charges are otherwise deemed of particular importance to EEOC's enforcement of the ADA. In these three situations, EEOC will bifurcate the charges and retain the ADA component of the charges (and when applicable, the allegations pertaining to discrimination on the basis of race, color, religion, sex, national origin or age), referring the section 503 affirmative action component of the charges to OFCCP for

processing and resolution under section 503.

For the purposes stated in the preceding paragraph, ADA charges also falling within the jurisdiction of section 503 will be considered complaints, simultaneously dual filed, under section 503.

Analysis of Comments and Revisions

The Commission received eight comments in response to a notice of proposed rulemaking published jointly with OFCCP on October 28, 1991. 56 FR 55578. One commenter supported the joint proposed rule as published. The other commenters suggested that various revisions be made. Two commenters expressed concern about the use of the Priority List as a means by which to determine the agency that will process and resolve complaints/charges, and asked that the Priority List be periodically published. Another commenter asked that § _____.5(e) of the joint proposed rule be revised to provide for the bifurcation of complaints/charges containing allegations concerning Priority List issues and violation of affirmative action requirements under section 503. Other commenters asked that complaints/charges not be bifurcated under any circumstances, and expressed confusion about the deferral period referred to in § _____.5(c) of the joint proposed rule. Concern was also expressed by two commenters about the confidentiality of section 503 affirmative action plans that may be given to the Commission as part of an exchange of information, and about the protection of classified or certain unclassified information disclosed to EEOC or OFCCP during the course of an investigation of a Federal contractor.

One commenter asked that the joint final rule provide for the transfer to EEOC of all complaints/charges that include a request for damages pursuant to the Civil Rights Act of 1991, Public Law 102–166. This commenter also asked that EEOC and OFCCP adopt a substantial weight review process, similar to that used by the Commission to review the investigative files of State and local agencies designated as "FEP agencies" under title VII of the Civil Rights Act of 1964, when reviewing complaints/charges pursuant to §§ _____.5(e)(2)(ii) and _____.6(a) of the joint proposed rule.

The Commission and OFCCP have made a number of revisions in response to these comments. Section _____.5(c) has been revised to clarify that the deferral period that will be waived is the deferral period referred to in the work-sharing agreements between EEOC and State and local agencies designated as FEP agencies.

Section _____.5(e) has been revised to provide that OFCCP will bifurcate any complaints/charges it receives that contain both Priority List issues and allegations of violation of section 503 affirmative action requirements. In such a situation, OFCCP will retain, process and resolve the allegations of violation of affirmative action requirements, and refer to EEOC only the allegations raising Priority List issues.

Sections _____.5(e)(2)(i) and _____.5(e)(2)(ii) of the joint proposed rule have also been revised. Section _____.5(e)(2)(i) now provides that when engaging in conciliation as EEOC's agent, OFCCP shall attempt to obtain appropriate "full relief" for the complainant/charging party. EEOC and OFCCP intend that "full relief" be distinguished from "make whole relief," which historically has referred to remedies such as back pay, front pay and reinstatement, but did not include compensatory or punitive damages. Pursuant to the Civil Rights Act of 1991, Public Law 102–166, passed after the issuance of the joint proposed rule, compensatory and/or punitive damages may be available in cases of intentional discrimination under the ADA. EEOC and OFCCP intend that "full relief" encompass "make whole relief" and, where appropriate under the ADA, compensatory and/or punitive damages.

If OFCCP (acting as EEOC's agent under the ADA) is unable to conciliate for appropriate compensatory and/or punitive damages, the conciliation attempt will be considered unsuccessful, and thus § _____.5(e)(2)(ii) will apply. Since compensatory and punitive damages are unavailable under section 503, OFCCP will not be able to obtain such relief in the context of litigation under that statute, and thus will not pursue administrative litigation of complaints/charges where damages would be appropriate relief. OFCCP will thereupon, in accordance with § _____.5(e)(2)(ii) of this part, close the section 503 component of the complaint/charge and refer the ADA charge component to EEOC for litigation review under the ADA.

EEOC and OFCCP also have not accepted a number of suggested revisions proposed by commenters. First, the joint final rule retains the provisions of the joint proposed rule regarding the development and use of the Priority List as a means by which to determine the agency that will process and resolve complaints/charges. The Priority List will be a constantly evolving internal and informal catalog of difficult ADA issues on which the Commission has not yet taken a position. OFCCP and the Commission have determined that it is important to identify such issues in this manner, and that it is appropriate for the Commission, as the agency responsible for the enforcement of the ADA, to process and resolve complaints/charges that raise these issues. However, since the Priority List will neither establish nor implement substantive ADA policy, the publication of the Priority List would not be appropriate.

Second, like the joint proposed rule, the joint final rule provides for the bifurcation of certain complaints/charges. OFCCP and EEOC have determined that such bifurcation is necessary, in view of the agencies' differing enforcement powers and areas of expertise, to ensure that the rights of complainants/charging parties are fully protected in the most efficient manner possible.

It should also be noted that the joint final rule does not provide additional confidentiality protection for section 503 affirmative action plans, or for the handling of classified and unclassified information received from Federal contractor respondents, beyond that which may be available under other existing Federal laws. OFCCP and the Commission have determined that the inclusion of additional confidentiality provisions in this part is not necessary in order to ensure adequate protection of this information.

Finally, it should be noted that EEOC and OFCCP have not accepted the suggestion that a substantial weight review process be incorporated into this part. While such a process is appropriate in the context of the review of the investigative files of FEP agencies under title VII of the Civil Rights Act of 1964, the Commission and OFCCP have determined that that process would not be appropriate in the context of the coordination of the enforcement efforts of EEOC and OFCCP as set forth in this part.

In addition to the revisions made in response to the comments from the public, the Commission and OFCCP have made several technical revisions to the joint final rule to ensure that it is consistent with the pre-existing Memorandum of Understanding (MOU) between the two agencies (46 FR 7435 (January 23, 1981)) coordinating the enforcement of title VII of the Civil Rights Act of 1964 and Executive Order 11246. Accordingly, §§ _____.2(b) and _____.2(c) have been added to the joint final rule. Section _____.2(b) provides that requests by third parties for disclosure of information be coordinated

with the agency that initially compiled or collected the information. Section _____.2(c) exempts from the requirements of § _____.2(b) requests for data in EEOC files by FEP agencies. However, § _____.2(c) requires FEP agencies to obtain express written approval from OFCCP before disclosing to the public any information initially compiled by OFCCP.

Similarly, consistent with the MOU between OFCCP and EEOC, § _____.5(e) has been revised to clarify that OFCCP shall normally retain, investigate, process and resolve all allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin that it receives. In appropriate cases, however, EEOC may request that it be referred such allegations to avoid duplication of effort and ensure effective law enforcement. Section _____.5(e) provides, further, that OFCCP will generally refer to EEOC complaints/charges including allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin, or allegations of discrimination based on age.

Other technical changes also have been made. Under revised § _____.5(e)(2)(ii), OFCCP will refer to EEOC, complaints/charges that it has pursued to administrative litigation, but that have been dismissed on procedural or jurisdictional grounds, or because the contractor/respondent fails to comply with an order to provide make whole relief. In these three situations, EEOC will either take further appropriate action, or issue a notice of right-to-sue. The joint proposed rule had provided that in such situations OFCCP would close the complaints/charges and issue a notice of right-to-sue.

A technical change has also been made to § _____.6(b). This change clarifies that EEOC will bifurcate complaints/changes it receives that are deemed "of particular importance" to the Commission's enforcement of the ADA, as well as those that include allegations of discrimination on the basis of race, color, religion, sex, national origin, or age, or allegations involving Priority List issues. Complaints/charges may be "of particular importance" for a variety of reasons. For example, a complaint/charge may raise a novel ADA issue not yet on the Priority List. The joint proposed rule had stated that EEOC would bifurcate complaints/charges that were "otherwise deemed important" to enforcement of the ADA.

Additionally, the Commission and OFCCP have revised § _____.7 to provide that this part shall be reviewed "periodically, and as appropriate" to determine whether it should be changed and whether it should remain in effect. The joint proposed rule had specified that such review would occur 24 months after the effective date of the final rule. This revision provides the Commission and OFCCP with greater flexibility to review this part whenever the Commission and OFCCP determine that such review is necessary or beneficial, rather than at the conclusion of a fixed time period.

The joint final rule is not a "major" rule as defined by section 1(b) of Executive Order 12291. The joint final rule simply coordinates EEOC and OFCCP investigation and enforcement of section 503 and ADA prohibitions of discrimination in employment on the basis of disability, and will not have a major or significant effect on the economy.

The text of the joint final rule is set out only once at the end of the joint preamble. The part heading, table of contents, and authority citation for the parts as they will appear in each CFR title follow the text of the joint final rule.

Text of Joint Final Rule

The text of the joint final rule, as adopted by the agencies specified in this document, appears below:

PART —PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

_____.1 Purpose and application.
_____.2 Exchange of information.
_____.3 Confidentiality.
_____.4 Standards for investigations, hearings, determinations and other proceedings.
_____.5 Processing of complaints filed with OFCCP.
_____.6 Processing of charges filed with EEOC.
_____.7 Review of this part.
_____.8 Definitions.

§ _____.1 Purpose and application.

The purpose of this part is to implement procedures for processing and resolving complaints/charges of employment discrimination filed against employers holding government contracts or subcontracts, where the complaints/charges fall within the jurisdiction of both section 503 of the Rehabilitation Act of 1973 (hereinafter "Section 503") and the Americans with Disabilities Act of 1990 (hereinafter "ADA"). The promulgation of this part is required pursuant to section 107(b) of the ADA. Nothing in this part should be deemed to affect the Department of Labor's (hereinafter "DOL") Office of Federal Contract Compliance Programs' (hereinafter "OFCCP") conduct of compliance reviews of government contractors and subcontractors under section 503. Nothing in this part is intended to create rights in any person.

§ _____.2 Exchange of information.

(a) EEOC and OFCCP shall share any information relating to the employment policies and practices of employers holding government contracts or subcontracts that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance review reports and files.

(b) All requests by third parties for disclosure of the information described in paragraph (a) of this section shall be coordinated with the agency which initially compiled or collected the information.

(c) Paragraph (b) of this section is not applicable to requests for data in EEOC files made by any state or local agency designated as a "FEP agency" with which EEOC has a charge resolution contract and a work-sharing agreement containing the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). However, such an agency shall not disclose any of the information, initially compiled by OFCCP, to the public without express written approval by the Director of OFCCP.

§ _____.3 Confidentiality.

When the Department of Labor receives information obtained by EEOC, the Department of Labor shall observe the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964, as incorporated by section 107(a) of the ADA, as would EEOC, except in cases where DOL receives the same information from a source independent of EEOC. Questions concerning confidentiality shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC.

§ _____.4 Standards for investigations, hearings, determinations and other proceedings.

In any OFCCP investigation, hearing, determination or other proceeding involving a complaint/charge that is dual filed under both section 503 and the

ADA, OFCCP will utilize legal standards consistent with those applied under the ADA in determining whether an employer has engaged in an unlawful employment practice. EEOC and OFCCP will coordinate the arrangement of any necessary training regarding the substantive or procedural provisions of the ADA, and of EEOC's implementing regulations (29 CFR part 1630 and 29 CFR part 1601).

§ _____.5 Processing of complaints filed with OFCCP.

(a) Complaints of employment discrimination filed with OFCCP will be considered charges, simultaneously dual filed, under the ADA whenever the complaints also fall within the jurisdiction of the ADA. OFCCP will act as EEOC's agent for the sole purposes of receiving, investigating and processing the ADA charge component of a section 503 complaint dual filed under the ADA, except as otherwise set forth in paragraph (e) of this section.

(b) Within ten days of receipt of a complaint of employment discrimination under section 503 (charge under the ADA), OFCCP shall notify the contractor/respondent that it has received a complaint of employment discrimination under section 503 (charge under the ADA). This notification shall state the date, place and circumstances of the alleged unlawful employment practice.

(c) Pursuant to work-sharing agreements between EEOC and state and local agencies designated as FEP agencies, the deferral period for section 503 complaints/ADA charges dual filed with OFCCP will be waived.

(d) OFCCP shall transfer promptly to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction. At the same time, OFCCP shall notify the complainant and the contractor/respondent of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date OFCCP received the complaint will be deemed the date it was received by EEOC.

(e) OFCCP shall investigate and process as set forth in this section all section 503 complaints/ADA charges dual filed with OFCCP, except as specifically provided in this paragraph. Section 503 complaints/ADA charges raising Priority List issues, those which also include allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin, and those which also include an allegation of discrimination on the basis of age will be referred in their entirety by OFCCP to EEOC for investigation, processing and final resolution, provided that such complaints/charges do not include allegations of violation of affirmative action requirements under section 503. In such a situation, OFCCP will bifurcate the complaints/charges and refer to EEOC the Priority List issues or allegations of discrimination on the basis of race, color, religion, sex, national origin, or age. OFCCP shall normally retain, investigate, process and resolve all allegations of discrimination, over which it has jurisdiction, of a systemic or class nature on the basis of race, color, religion, sex, or national origin that it receives. However, in appropriate cases the EEOC may request that it be referred such allegations so as to avoid duplication of effort and assure effective law enforcement.

(1) *No cause section 503 complaints/ADA charges.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of no violation under section 503 (no cause under the ADA), OFCCP will issue a determination of no violation/no cause under both section 503 and the ADA, and issue a right-to-sue letter under the ADA, closing the complaint/charge.

(2) *Cause section 503 complaints/ADA charges*—(i) *Successful conciliation.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of violation under section 503 (cause under the ADA), OFCCP will issue a finding of violation/cause under both section 503 and ADA. OFCCP shall attempt conciliation to obtain appropriate full relief for the complainant (charging party), consistent with EEOC's standards for remedies. If conciliation is successful and the contractor/respondent agrees to provide full relief, the section 503 complaint/ADA charge will be closed and the conciliation agreement will state that the complainant (charging party) agrees to waive the right to pursue the subject issues further under section 503 and/or the ADA.

(ii) *Unsuccessful conciliation.* All section 503 complaints/ADA charges not successfully conciliated will be considered for OFCCP administrative litigation under section 503, consistent with OFCCP's usual procedures. (See 41 CFR part 60–741, subpart B.) If OFCCP pursues administrative litigation under section 503, OFCCP will close the complaint/charge at the conclusion of the litigation process (including the imposition of appropriate sanctions), unless the complaint/charge is dismissed on procedural grounds or because of a lack of jurisdiction, or the contractor/respondent fails to comply with an order to provide make whole relief. In these three cases, OFCCP will refer the matter to EEOC for any action it deems appropriate. If EEOC declines to pursue further action, it will issue a notice of right-to-sue. If OFCCP does not pursue administrative enforcement, it will close the section 503 component of the complaint/charge and refer the ADA charge component to EEOC for litigation review under the ADA. If EEOC declines to litigate, EEOC will close the ADA charge and issue a notice of right-to-sue.

(f) Consistent with the ADA procedures set forth at 29 CFR 1601.28, OFCCP shall promptly issue upon request a notice of right-to-sue after 180 days from the date the complaint/charge was filed. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of any complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of section 503 and/or the ADA to further process the complaint/charge.

(g) If an individual who has already filed a section 503 complaint with OFCCP subsequently attempts to file or files an ADA charge with EEOC covering the same facts and issues, EEOC will decline to accept the charge (or, alternatively, dismiss a charge that has been filed) on the grounds that such charge has already been filed under the ADA, simultaneous with the filing of the earlier section 503 complaint, and will be processed by OFCCP in accordance with the provisions of this section.

§ _____.6 Processing of charges filed with EEOC.

(a) *ADA cause charges falling within the jurisdiction of section 503 that the Commission has declined to litigate.* ADA cause charges that also fall within the jurisdiction of section 503 and that the Commission has declined to litigate will be referred to OFCCP for review of the file and any administrative action deemed appropriate under section 503. Such charges will be considered to be complaints, simultaneously dual filed under section 503, solely for the purposes of OFCCP review and administrative action described in this paragraph.

(b) *ADA charges which also include allegations of failure to comply with section 503 affirmative action requirements.* ADA charges filed with EEOC, in which both allegations of discrimination under the ADA and violation of affirmative action requirements under section 503 are made, will be referred in their entirety to

OFCCP for processing and resolution under section 503 and the ADA, unless the charges also include allegations of discrimination on the basis of race, color, religion, sex, national origin or age, or include allegations involving Priority List issues, or the charges are otherwise deemed of particular importance to EEOC's enforcement of the ADA. In such situations, EEOC will bifurcate the charges and retain the ADA component of the charges (and when applicable, the allegations pertaining to discrimination on the basis of race, color, religion, sex, national origin or age), referring the section 503 affirmative action component of the charges to OFCCP for processing and resolution under section 503. ADA charges which raise both discrimination issues under the ADA and section 503 affirmative action issues will be considered complaints, simultaneously dual filed under section 503, solely for the purposes of referral to OFCCP for processing, as described in this paragraph.

(c) EEOC shall transfer promptly to OFCCP a charge of disability-related employment discrimination over which it does not have jurisdiction, but over which OFCCP may have jurisdiction. At the same time, EEOC shall notify the charging party and the contractor/respondent of the transfer, the reason for the transfer, the location of the OFCCP office to which the charge was transferred and that the date EEOC received the charge will be deemed the date it was received by OFCCP.

(d) Except as otherwise stated in paragraphs (a) and (b) of this section, individuals alleging violations of laws enforced by DOL and over which EEOC has no jurisdiction will be referred to DOL to file a complaint.

(e) If an individual who has already filed an ADA charge with EEOC subsequently attempts to file or files a section 503 complaint with OFCCP covering the same facts and issues, OFCCP will accept the complaint, but will adopt as a disposition of the complaint EEOC's resolution of the ADA charge (including EEOC's termination of proceedings upon its issuance of a notice of right-to-sue).

§ _____.7 Review of this part.

This part shall be reviewed by the Chairman of the EEOC and the Director of OFCCP periodically, and as appropriate, to determine whether changes to the part are necessary or desirable, and whether the part should remain in effect.

§ _____.8 Definitions.

As used in this part, the term:

ADA refers to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

Affirmative action requirements refers to affirmative action requirements required by DOL pursuant to section 503 of the Rehabilitation Act of 1973, that go beyond the nondiscrimination requirements imposed by the ADA.

Chairman of the EEOC refers to the Chairman of the U.S. Equal Employment Opportunity Commission, or his or her designee.

Complaint/Charge means a section 503 complaint/ADA charge. The terms are used interchangeably.

Director of the Office of Federal Contract Compliance Programs refers to that individual or his or her designee.

DOL means the U.S. Department of Labor, and where appropriate, any of its headquarters or regional offices.

EEOC means the U.S. Equal Employment Opportunity Commission, and where appropriate, any of its headquarters, district, area, local, or field offices.

Government means the government of the United States of America.

Priority List refers to a document listing a limited number of controversial topics under the ADA on which there is not yet definitive guidance setting forth EEOC's position. The Priority List will be jointly developed and periodically reviewed by EEOC and DOL. Any policy documents involving Priority List issues will be coordinated between DOL and EEOC pursuant to Executive Order 12067 (3 CFR, 1978 Comp., p. 206) prior to final approval by EEOC.

OFCCP means the Office of Federal Contract Compliance Programs, and where appropriate, any of its regional or district offices.

Section 503 refers to section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793).

Section 503 complaint/ADA charge refers to a complaint that has been filed with OFCCP under section 503 of the Rehabilitation Act, and has been deemed to be simultaneously dual filed with EEOC under the ADA.

Adoption of the Joint Final Rule

The agency specific adoption of the joint final rule, which appears at the end of the joint preamble, appears below:

TITLE 29—LABOR

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1641

List of Subjects in 29 CFR Part 1641

Administrative practice and procedure, Americans with disabilities, Equal employment opportunity, Government contracts.

Accordingly, title 29, chapter XIV of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. this 17th day of January, 1992.

For the Commission:

Evan J. Kemp, Jr.,

Chairman.

Part 1641 is added to chapter XIV to read as set forth at the end of the joint preamble.

PART 1641—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

1641.1 Purpose and application.
1641.2 Exchange of information.
1641.3 Confidentiality.
1641.4 Standards for investigations, hearings, determinations and other proceedings.
1641.5 Processing of complaints filed with OFCCP.
1641.6 Processing of charges filed with EEOC.
1641.7 Review of this part.
1641.8 Definitions.

Authority: 42 U.S.C. 12117(b).

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

DEPARTMENT OF LABOR

Office of Federal Contracts Compliance Programs

41 CFR Part 60–742

List of Subjects in 41 CFR Part 60–742

Administrative practice and procedure, Americans with disabilities, Equal employment opportunity, Government contracts.

Accordingly, title 41, chapter 60 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. this 21st day of January, 1992.

For the Department:

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Part 60–742 is added to chapter 60 to read as set forth at the end of the joint preamble.

PART 60–742—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

60–742.1 Purpose and application.
60–742.2 Exchange of information.
60–742.3 Confidentiality.
60–742.4 Standards for investigations, hearings, determinations and other proceedings.
60–742.5 Processing of complaints filed with OFCCP.
60–742.6 Processing of charges filed with EEOC.
60–742.7 Review of this part.
60–742.8 Definitions.

Authority: 42 U.S.C. 12117(b).

[FR Doc. 92–1796 Filed 1–23–92; 8:45 am]

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Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties: Rule and Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219-AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) procedures in 30 CFR part 100 for proposing civil penalties under the Federal Mine Safety and Health Act of 1977 (Mine Act). The rule is responsive to the Omnibus Budget Reconciliation Act that became effective on November 5, 1990, and to an Order from the United States Court of Appeals for the District of Columbia Circuit. It adjusts the existing penalties primarily for the inflation that has occurred since 1982, when the rule was last revised, by including across-the-board increases for all categories of penalties. These changes are intended to induce greater overall mine operator compliance with MSHA's safety and health standards, thereby improving safety and health for miners. This final rule also makes permanent the change introduced in the December 29, 1989 (54 FR 53609), interim action that included single penalty violations in an operator's history of violations for regular penalty assessments. Simultaneously with the publication of this final rule, MSHA is publishing a proposed rule specifically addressing the excessive history assessment program that was proposed on December 28, 1990, (55 FR 53482).

EFFECTIVE DATE: March 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The final rule contains no information collection paperwork requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking History

MSHA initially had two types of assessments: regular assessments and special assessments. Regular assessments were, and continue to be, computer-generated using a formula system whereby penalty points are computed and then converted to a dollar amount. This computation is based on the criteria in the Mine Act for the assessment of penalties. The criteria include mine and company size, history of violations, negligence, gravity of the hazard, and good faith on the part of the operator to achieve compliance. Special assessments were, and continue to be, prepared manually for violations that are of such a nature or seriousness that an appropriate penalty cannot be determined under this regular assessment formula.

On May 21, 1992, MSHA revised its penalty regulations to include a $20 single penalty assessment for non-significant-and-substantial (non-S&S) violations that were timely abated (47 FR 22286). Non-S&S violations are violations that are not reasonably likely to result in a reasonably serious injury or illness. The regular formula system was used to address significant-and-substantial (S&S) violations. S&S violations are those that are reasonably likely to result in a reasonably serious injury or illness. The special assessment system continued to deal with the more serious violations.

On February 17, 1988, the Coal Employment Project and the United Mine Workers of America challenged the Secretary of Labor's authority to assess a $20 single penalty for non-S&S violations that are timely abated. On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit upheld MSHA's authority to assess the $20 single penalty, *Coal Employment Project et al.*, v. *Dole*, 889 F.2d 1127, but ordered the Agency to revise its civil penalty regulations: (1) To take a mine operator's history of violations specifically into account in determining whether a violation qualifies for a single penalty assessment; and (2) to include single penalty violations in the history of violations computation for regular assessments. The Court further ordered MSHA to take immediate interim steps to correct these defects in the assessment system and remanded the record to MSHA to revise its regulations to comply with the Court's order. The Court retained jurisdiction of the case to consider the issues after remand.

In response to the remand, MSHA published an interim final rule on December 29, 1989 (54 FR 53609), that temporarily suspended the sentence in 30 CFR 100.3(c) by which timely paid single penalty violations were excluded from an operator's history of violations for regular assessment purposes. Thus, in calculating penalties proposed for S&S violations, MSHA now includes all final violations, both S&S and non-S&S, in an operator's history. The Agency also revised its policies by instructing MSHA enforcement personnel to review non-S&S violations involving high negligence and an excessive history of the same type of violation for possible special assessment. While these interim provisions were is effect, the Agency would begin the rulemaking process to develop a final rule, thereby complying with the Court's order.

On April 12, 1990, the Court found MSHA's "high negligence" requirement in its new assessment policy concerning non-S&S violations to be inconsistent with the November 21, 1989, order. Accordingly, the Court gave MSHA 45 days to respond to the Court's expressed concerns. On May 29, 1990, MSHA issued a program policy letter implementing a program of increased penalties for a mine with an "excessive history" of violations including both S&S and non S&S-violations.

On November 5, 1990, the Omnibus Budget Reconciliation Act became effective and amended the Mine Act to increase the maximum civil penalty for a violation from $10,000 to $50,000. It also raised the maximum penalty for failure to correct a violation from $1,000 to $5,000 per day. Finally, it expected MSHA to increase all of its penalty assessment across-the-board.

On December 28, 1990, MSHA published a proposed revision to its civil penalty regulations (55 FR 53482) that included an across-the-board increase in

all of the Agency's penalties. The proposal would have provided for increases in penalty assessments when a mine has an excessive history of violations. The excessive history proposal was based on the May 29, 1990, program policy letter. The comment period on the proposal was initially scheduled to close on March 1, 1991, but was extended to March 18, 1991 (56 FR 8171) and then to April 2, 1991 (56 FR 11130), at which time it closed. MSHA received comments from all sectors of the mining industry.

III. Discussion and Summary of the Final Rule

A. General Discussion

With this final rule, MSHA accomplishes three basic objectives: (1) Increasing the overall penalty assessments in accordance with Congressional mandate and intent; (2) retaining an assessment system in which violations involving serious hazards receive greater penalties than violations involving non-serious hazards; and (3) including non-S&S violations in the history of violations for purposes of regular penalty assessments.

This final rule responds to both the Omnibus Budget Reconciliation Act and to the Court of Appeals. The former requires MSHA to adjust its penalty conversion table to incorporate the legislated increase in the maximum penalty assessment, and reflects the clear Congressional intent that civil penalties be increased across-the-board. The latter requires MSHA to revise its civil penalty regulations to include non-S&S violations in an operator's history of violations, and to consider an operator's history of violations in determining whether a non-S&S violation would be eligible for a single penalty assessment.

The final rule is generally responsive to these legislative and judicial concerns. However, issues related to the effect of history of violations on determining whether a non-S&S violation would be eligible for a single penalty assessment, that is, excessive history, are not addressed in this final rule. The excessive history program was proposed by the Agency in the December 1990 notice. MSHA received numerous and extensive comments on the excessive history proposal. In addition, some commenters took the opportunity to comment on the excessive history program criteria as contained in the May 29, 1990, program policy letter. MSHA has reviewed all comments on the excessive history program and believes that the comments raise many legitimate issues. For this reason, MSHA has developed a revised excessive history proposal which will be issued as a separate rulemaking. Therefore, this final rule will address all issues in the December 1990 proposal except for excessive history.

In addition to and simultaneously with the revised proposal, the Agency is issuing a revised program policy letter containing the specific criteria for implementing an excessive history program.

MSHA received a wide variety of comments on its proposal. However, several comments raised issues outside the scope of the proposal. All of these comments were carefully reviewed and evaluated. The issues addressed in this final rule are limited to those raised in the proposal.

B. Section-By-Section Analysis of the Final Rule

The following section-by-section analysis addresses the issues raised by the proposal and covered in the final rule.

Section 100.3 Determination of Penalty Amount; Regular Assessment

In this section, MSHA revises paragraphs (c) and (g).

Section 100.3(c) History of Previous Violations

The December 1989 interim action suspended the sentence in this paragraph that excluded violations that received a single penalty assessment and were paid in a timely manner from being counted as part of an operator's history of violations for penalty assessments. Several commenters opposed this revision. They contended that it unfairly punished those operators who, due to the nature of their mining operations, tend to receive many non-S&S violations and relatively few S&S violations. As a single penalty violation represents a minimal hazard, they stated that less hazardous mines will be assessed at a higher rate than more hazardous mines by counting single penalty assessments in history. Other commenters disagreed and contended that all violations have the potential for some risk to the miner and should be counted for history purposes. In this final rule, MSHA adopts the language in the December 1989 interim action which deleted the language that excluded timely paid single penalty assessments from the calculation of history of violations for assessment purposes. This action is consistent with the Court's holding in Coal Employment Project that Congress intended all violations to be counted in a mine's history.

Section 100.3(g) Penalty Conversion Table

MSHA received many comments concerning the proposed across-the-board increase in the civil penalty conversion table. Most commenters stated that the proposed five-fold increase in the maximum civil penalty and the general across-the-board increases at each penalty level were too great and would cause significant financial hardship for many mine operators. Several of these commenters noted that, although there has been general inflation in the economy since these penalties were first established, such has not been the case for the prices received by operators for many commodities, particularly coal. Some of these commenters further asserted that many operators could be driven out of business by such an increase in penalties. A few commenters expressed the opinion that this action was proposed in order for MSHA to enhance its revenues.

Other commenters, however, disagreed with the proposed penalty table on the grounds that Congress intended, through the Omnibus Budget Reconciliation Act, that MSHA levy a five-fold across-the-board increase for all its civil penalties.

In this final rule, MSHA adopts the penalty table contained in the proposal. This action is responsive to the Congressional mandate expressed in the Omnibus Budget Reconciliation Act. Further, an across-the-board increase in the final rule reflects inflationary changes that have occurred since penalties were last revised, and also reflects MSHA's philosophy that more serious hazards warrant higher penalty increases. MSHA is substantially increasing its dollar assessments so that the higher penalty points receive a higher percentage increase than do the lower penalty points. Thus, lower penalty point assessments are increased by 1.5 times the previous assessment and this percentage increase grows to a five-fold increase at the higher penalty points.

Finally, it should be noted that all MSHA civil penalty assessments are paid into the United States Treasury. None are deposited into MSHA's budget.

In the preamble to the proposed rule, MSHA requested public comments on whether the final rule should include an annual, automatic inflation increase for penalties. Several commenters opposed an automatic inflation adjustment because it would add a future burden to mine operators that could become

financially disastrous if the prices of mine commodities fell or did not keep pace with the economy's inflation rate. Some of these commenters also stated that each future increase in civil penalties must go through public rulemaking before it could be implemented. Other commenters were in favor of an annual, automatic inflation adjustment because it was the only practical way to ensure that the real dollar value of the civil penalties does not diminish over time.

After carefully reviewing these comments, MSHA determined that it is not appropriate for the final rule to contain an automatic inflation adjustment factor.

Section 100.4 Determination of Penalty; Single Penalty Assessment

MSHA received many widely varied comments concerning its proposals to increase the current single penalty from $20 to $50 for a timely abated non-S&S violation.

Some commenters objected to the proposed single penalty increase as being much higher than the level warranted by the inflation that has occurred since the $20 penalty was instituted in 1982. Other commenters objected to any increase at all because these non-S&S violations are violations for which there is no associated potential injury. Another commenter, however, suggested that these penalties be increased to $500 in order to provide a meaningful deterrent to operators. Some commenters suggested that MSHA abandon the single penalty assessment and assess all non-S&S penalties under the regular assessment formula.

MSHA has reviewed these comments and the Agency's enforcement records and has included a $50 single penalty in the final rule. This represents a substantial increase in the single penalty and the Agency continues to believe that the single penalty is warranted in certain circumstances. The single penalty assessment continues to serve its purpose of achieving improved miner safety and health by reducing the amount of time inspectors spend on conferencing violations that have a minimal impact on mine safety and health. This, in turn, has allowed inspectors to spend more time focusing on the S&S violations that have the greater potential to cause fatalities and injuries. MSHA believes that the increased single penalty will be a more effective deterrent to non-S&S violations.

Section 100.5 Special Assessments

Although there is no wording change in this section, there will be a change in the amount of penalties assessed to be consistent with the increase in single penalty and regular formula assessments.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis (RIA) be performed for any regulation that would have a $100 million impact on the economy or a major impact on an industry. MSHA believes that this final rule will have a major impact on the mining industry, and therefore, a regulatory impact analysis (RIA) has been prepared and is available for public review.

Briefly summarizing the findings of that RIA, using the data from June 1, 1990, through May 31, 1991, MSHA estimates what would have been the amounts assessed under the new penalty conversion table and under the old penalty table that would have occurred in the absence of any excessive history program for regular assessments, special assessments, and single penalty assessments.

[In millions of dollars]

Assessment	Previous penalty table assessment	New penalty table assessment	Difference
Regular	10.9	20.3	9.4
Special	4.4	8.3	3.9
Single penalty	1.1	2.9	1.8
Total	16.4	31.5	15.1

The Agency also determined that the final rule will have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis has also been prepared and is available. Small operators generally are in the weakest financial position and an increase in penalty assessments will have a greater effect on them than it will have on large operators. Nevertheless, this greater effect on small operators does not mean that it will result in a substantial number of these operators going out of business solely because of the increased penalty assessments.

V. Paperwork Reduction Act

This proposal does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: January 17, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Therefore, part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for part 100 continues to read as follows:

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

2. Section 100.3 is amended by revising the text in paragraph (c) preceding the tables and paragraph (g) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *

(c) *History of previous violations.* History is based on the number of assessed violations in a preceding 24-month period. Only violations that have been paid or finally adjudicated will be included in determining history. The history of previous violations may account for a maximum of 20 penalty points. For mine operators, the penalty points will be calculated on the basis of the average number of assessed violations per inspection day (VPID) (Table VI). For independent contractors, penalty points will be calculated on the basis of the average number of violations assessed per year at all mines (Table VII).

* * * * *

(g) *Penalty conversion table.* The following penalty conversion table shall be used to convert the accumulation of penalty points to the appropriate proposed monetary assessment.

PENALTY CONVERSION TABLE

Points	Penalty
20 or fewer	60
21	66
22	72
23	78
24	84
25	90
26	99
27	108
28	117
29	126
30	135
31	147
32	159
33	171
34	183
35	195
36	210
37	225
38	240
39	255
40	270

PENALTY CONVERSION TABLE—Continued

Points	Penalty
41	292
42	315
43	337
44	360
45	382
46	412
47	442
48	518
49	617
50	724
51	851
52	987
53	1,134
54	1,290
55	1,457
56	1,650
57	1,855
58	2,072
59	2,301
60	2,542
61	2,816
62	3,105
63	3,407
64	3,724
65	4,000
66	4,200
67	4,400
68	4,600
69	4,800

PENALTY CONVERSION TABLE—Continued

Points	Penalty
70	5,000
71	5,250
72	5,500
73	5,750
74	6,000
75	6,250
76	6,500
77	7,000
78	7,500
79	8,000
80	8,500
81	9,500
82	10,500
83	11,500
84	12,500
85	13,500
86	15,000
87	17,000
88	19,000
89	21,000
90	23,000
91	25,000
92	27,500
93	30,000
94	32,500
95	35,000
96	37,500
97	40,000
98	42,500

PENALTY CONVERSION TABLE—Continued

Points	Penalty
99	45,000
100	50,000

* * * * *

3. Section 100.4 is revised to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

An assessment of $50 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness, and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $50 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5).

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