

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 723, 724, 845 and 846**

RIN 1029-AC48

**Civil Penalty Adjustments****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule.

**SUMMARY:** This rule adjusts the penalty amount of certain civil monetary penalties authorized by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 which requires that civil monetary penalties be adjusted for inflation at least once every four years.

**DATES:** *Effective Date:* November 28, 2005.

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**I. Background***A. The Federal Civil Penalties Inflation Adjustment Act*

In an effort to maintain the deterrent effect of civil monetary penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461, note) was amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701) to require Federal agencies to regularly adjust CMPs for inflation. The Inflation Adjustment Act, as amended, requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make subsequent adjustments at least once every four years thereafter. The Office of Surface Mining Reclamation and

Enforcement (we or OSM) has adjusted the CMPs authorized by SMCRA on two previous occasions, November 28, 1997 (62 FR 63274), and November 21, 2001 (66 FR 58644). To satisfy the requirement of the Inflation Adjustment Act, we are again adjusting our CMPs according to the formula set forth in the law.

Under the Inflation Adjustment Act, the inflation adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment. The cost-of-living adjustment is defined as the percentage of each CMP by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor. See 28 U.S.C. 2461, note. In addition, the Inflation Adjustment Act specifies that any resulting increases in a CMP must be rounded according to a stated rounding formula, and apply only to violations that occur after the date the increase takes effect.

*B. Method of Calculation*

Since this adjustment will be effective before December 31, 2005, we must use the CPI-U for the month of June 2004. That figure is 189.7. We last reviewed and adjusted our civil monetary penalties in November 2001. Because of the rounding formula that we are required to use, only ten CMPs were adjusted in 2001. For those ten CMPs, the factor that we have used in calculating the increase for 2005 is 189.7 (the CPI-U for June 2004) divided by 178.0 (the CPI-U for June 2001). The resulting multiplier is 1.0657 (i.e., a 6.57 percent increase).

For those CMPs that were adjusted in 1997, but not in 2001, we divide 189.7 (the CPI-U for June 2004) by 160.3 (the CPI-U for June 1997). The resulting multiplier is 1.1834 (i.e., an 18.34 percent increase).

Any potential increase under this adjustment is then subject to the rounding formula set forth in section 5(a) of the Inflation Adjustment Act. Under the formula, any increase must be rounded to the nearest:

- (1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

*C. Example of a Calculation*

To explain the inflation adjustment calculation for the CMPs that were last adjusted in 2001, we will use the following example. Our regulations at 30 CFR 845.15(b) currently require the imposition of a civil penalty of not less than \$925 for each day during which an operator fails to abate a violation within the specified abatement period contained in a notice of violation or a cessation order. Multiplying the \$925 by the inflation factor of 1.0657 results in a sum of \$985.77. We round the raw inflation amount (\$985.77) according to the rounding formula in section 5(a) of the Inflation Adjustment Act. Since we round only the increase, we calculate the increase amount by subtracting the current penalty amount from the raw inflation adjustment. Accordingly, the increase amount for the penalty in our example is \$60.77 (i.e., \$985.77 minus \$925.00). Under the rounding formula, if the penalty is more than \$100 but less than \$1,000, we round the increase to the nearest multiple of \$100 (i.e., \$60.77 is rounded to \$100.00). Finally, we add the rounded increase to the existing penalty which results in a new § 845.15(b) penalty amount of \$1,025.00 (i.e., \$925.00 plus \$100.00) for each day during which the failure to abate continues. For those CMPs last adjusted in 1997, the calculations would be the same but the multiplier would be 1.1834 instead of 1.0657.

*D. Civil Monetary Penalties Affected by This Adjustment*

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. OSM's regulations implementing the CMP provisions of section 518 are located in 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14. Because of the rounding formula specified in the Inflation Adjustment Act, some of the CMPs in those sections were not adjusted in 2001 and some of them are not being adjusted in this review. When we review and adjust our CMPs in 2009, we will be required to compare the CPI-U for June 2008 with the CPI-U for the year in which each CMP was last adjusted. In

some instances that will be 1997, and in others 2001 or 2005.

#### *E. Effect of the Rule in Federal Program States and on Indian Lands*

The increase in civil monetary penalties contained in this rule will apply through cross-referencing to the following Federal program states: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for those States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The increase in civil monetary penalties also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750.

#### *F. Effect of the Rule on Approved State Programs*

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are "no less stringent than" those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM's regulations governing CMPs, the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Consequently, we cannot require that the CMP provisions contained in a State's regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4, 1980 (45 FR 51548).

Following publication of this final rule, we will, however, evaluate the State programs approved under section 503 of SMCRA and, based on the requirements of SMCRA, our regulations, and the court's opinion, determine any changes in those programs that will be necessary. When we determine that a particular State program provision should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17.

## **II. Procedural Matters and Required Determinations**

### *Administrative Procedure Act*

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. This rulemaking is consistent with the statutory authority and requirements set forth in the Inflation Adjustment Act as amended by the Debt Collection Improvement Act of 1996. The Inflation Adjustment Act requires that we adjust our CMPs once every four years and specifies the manner in which the adjustment is to be made. Accordingly, the adjustments made may be seen as ministerial, technical, and non-discretionary. For these same reasons, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

### *Executive Order 12866—Regulatory Planning and Review*

This rule has been reviewed under the provisions of Executive Order 12866 and is not considered a significant regulatory action. This determination is based on the fact that the rule adjusts OSM's CMPs according to the formula contained in the Inflation Adjustment Act. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to the rule do not engage in prohibited activities and practices, and, as a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those who may engage in prohibited behavior in violation of SMCRA.

Civil penalty data from our annual reports indicates that in Fiscal Years 2001–2004, we conducted a total of 8,484 inspections on sites for which OSM is the regulatory authority, and issued a total of 157 Notices of Violation and 8 Failure-to-Abate Cessation orders. During those four years, the total CMPs collected by OSM for all violations was \$231,560. If that number were adjusted for inflation using the largest inflation factor contained in this rule (1.1834 or 18.34 percent), the CMPs collected for

that period would have increased by \$42,468 for a total of \$274,028. Consequently, the annual increase in CMPs that we might reasonably expect to collect under the revised dollar amounts contained in this rule is substantially less than the \$100 million annual threshold contained in Executive Order 12866 for an economically significant rule. Based on the above, we have determined that:

a. The rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. The rule does not raise novel legal or policy issues.

### *Regulatory Flexibility Act*

The Department of the Interior certifies that this revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those who violate the provisions of SMCRA. As previously indicated, the number of violation notices issued during the past four years was not significant when compared to the total number of Federal inspections conducted, and the estimated increase in cost to operators that will result from the inflation adjustment is not considered significant.

### *Small Business Regulatory Enforcement Fairness Act*

For the reasons previously stated, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of \$100 million.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S. based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

For purposes of compliance with the Unfunded Mandates Reform Act of 1995, this rule will not impose any obligations that individually or cumulatively would require an aggregate expenditure of \$100 million or more by State, local, and Tribal governments and the private sector in any given year.

*Federal Paperwork Reduction Act*

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

We have reviewed this rule and determined that it is categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969. In addition, we have determined that none of the “extraordinary circumstances” exceptions to the categorical exclusion apply. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendixes 1.9 and 2).

*Executive Order 12988—Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule (1) does not unduly burden the judicial system and (2) meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is not considered significant under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions

would not have substantial direct effects on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*Executive Order 12630—Takings*

In accordance with Executive Order 12630, the rule does not have takings implications. This determination is based on the fact that the rule will not have an impact on the use or value of private property and so, does not result in significant costs to the government.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. It will not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

**List of Subjects**

*30 CFR Part 723*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

*30 CFR Part 724*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

*30 CFR Part 845*

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 846*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: November 10, 2005.

**James O. Ratliff,**

*Acting Assistant Secretary, Land and Minerals Management.*

■ For the reasons set out in the preamble, 30 CFR parts 723, 724, 845 and 846 are amended as follows:

**PART 723—CIVIL PENALTIES**

■ 1. The authority citation for part 723 is revised to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 2. Section 723.14 is amended by revising the table to read as follows:

**§ 723.14 Determination of amount of penalty.**

\* \* \* \* \*

	Points	Dollars
1	.....	22
2	.....	54
3	.....	76
4	.....	108
5	.....	110
6	.....	132
7	.....	154
8	.....	176
9	.....	198
10	.....	220
11	.....	242
12	.....	264
13	.....	386
14	.....	408
15	.....	430
16	.....	452
17	.....	474
18	.....	496
19	.....	518
20	.....	540
21	.....	562
22	.....	584
23	.....	606
24	.....	628
25	.....	650
26	.....	760
27	.....	970
28	.....	1,080
29	.....	1,090
30	.....	1,100
31	.....	1,210
32	.....	1,320
33	.....	1,430
34	.....	1,540
35	.....	1,650
36	.....	1,760
37	.....	1,870
38	.....	1,980
39	.....	2,090
40	.....	2,200
41	.....	2,310
42	.....	2,420
43	.....	2,530
44	.....	2,640
45	.....	3,750
46	.....	3,860
47	.....	3,970
48	.....	4,080
49	.....	4,190
50	.....	4,300
51	.....	4,410
52	.....	4,520
53	.....	4,630
54	.....	4,740
55	.....	4,850
56	.....	4,960
57	.....	5,070
58	.....	5,180
59	.....	5,290
60	.....	5,400
61	.....	5,510
62	.....	5,620
63	.....	5,730
64	.....	5,840
65	.....	5,950
66	.....	6,060
67	.....	6,170
68	.....	6,280
69	.....	6,390
70	.....	6,500

■ 3. In § 723.15, amend paragraph (b) by removing the dollar amount “\$925” and adding in its place “\$1,025.”

**PART 724—INDIVIDUAL CIVIL PENALTIES**

■ 4. The authority citation for part 724 is revised to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 5. Section 724.14 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 724.14 Amount of Individual Civil Penalty.**

\* \* \* \* \*

(b) The penalty shall not exceed \$6,500 for each violation. \* \* \*

**PART 845—CIVIL PENALTIES**

■ 6. The authority citation for part 845 is revised to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. Section 845.14 is amended by revising the table to read as follows:

**§ 845.14 Determination of amount of penalty.**

\* \* \* \* \*

Points	Dollars
1	22
2	54
3	76
4	108
5	110
6	132
7	154
8	176
9	198

Points	Dollars	Points	Dollars
10	220	54	4,740
11	242	55	4,850
12	264	56	4,960
13	386	57	5,070
14	408	58	5,180
15	430	59	5,290
16	452	60	5,400
17	474	61	5,510
18	496	62	5,620
19	518	63	5,730
20	540	64	5,840
21	562	65	5,950
22	584	66	6,060
23	606	67	6,170
24	628	68	6,280
25	650	69	6,390
26	760	70	6,500
27	970		
28	1,080		
29	1,090		
30	1,100		
31	1,210		
32	1,320		
33	1,430		
34	1,540		
35	1,650		
36	1,760		
37	1,870		
38	1,980		
39	2,090		
40	2,200		
41	2,310		
42	2,420		
43	2,530		
44	2,640		
45	3,750		
46	3,860		
47	3,970		
48	4,080		
49	4,190		
50	4,300		
51	4,410		
52	4,520		
53	4,630		

■ 8. In Section 845.15, amend paragraph (b) by removing the dollar amount “\$925” and adding in its place “\$1,025.”

**PART 846—CIVIL PENALTIES**

■ 9. The authority citation for part 846 is revised to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 10. Section 846.14 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 846.14 Amount of Individual Civil Penalty.**

\* \* \* \* \*

(b) The penalty shall not exceed \$6,500 for each violation. \* \* \*

[FR Doc. 05–23015 Filed 11–21–05; 8:45 am]

BILLING CODE 4310–05–P