CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS—Continued

U.S.C. Section	Former maximum penalty amount (in dollars)[1]	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
333 note	N/A	For the fourth violation within a 24-month period by a retailer without an approved training program.	2009	2,000 (not adjusted).
333 note	N/A	For the fifth violation within a 36-month period by a retailer without an approved training program.	2009	5,000 (not adjusted).
333 note	N/A	For the six or subsequent violation within a 48-month period by a retailer without an approved training program.	2009	10,000 (not adjusted).
335b(a)	275,000	Per violation for an individual	2008	300,000.
335b(a)	1,100,000	Per violation for "any other person"	2008	1,200,000.
360pp(b)(1)	1,100	Per violation per person	2008	1,100 (not adjusted).
360pp(b)(1)	330,000	For any related series of violations	2008	355,000.
42 U.S.C.				
263b(h)(3)	11,000	Per violation	2008	11,000 (not adjusted).
300aa–28(b)(1)	110,000	Per occurrence	2008	120,000.

[1] Maximum penalties assessed under The Family Smoking Prevention and Tobacco Control Act do not have a "former maximum penalty."

Dated: November 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Penalty Settlement Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, or Mine Act. Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is publishing a final rule to streamline the process for settling civil penalties assessed under the Mine Act.

DATES: The final rule takes effect on December 30, 2010. The Commission will accept written and electronic comments received on or before December 15, 2010.

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state "Comments on Penalty Settlement Rule" in the subject line and be sent to *mmccord@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2010, the Commission published in the **Federal Register** an interim rule regarding the Commission's civil penalty settlement procedures. 75 FR 21987. The Commission explained that since 2006, the number of new cases filed with the Commission has dramatically increased, and that in order to deal with that burgeoning caseload, the Commission is considering methods to simplify how it processes civil penalty settlements. The interim rule became effective on May 27, 2010, and the Commission accepted comments on the rule through June 28, 2010. The Commission received comments from the Secretary of Labor (the "Secretary") through the U.S. Department of Labor's Office of the Solicitor, individual Conference and Litigation Representatives ("CLRs"), and a few members of the mining community.

Under section 110(k) of the Mine Act, 30 U.S.C. 820(k), a proposed civil penalty that has been contested before the Commission may be settled only with the approval of the Commission. Under the Commission's practice prior to the effective date of the interim rule, a party submitted to a Commission Administrative Law Judge a motion to approve a penalty settlement that included for each violation the amount of the penalty proposed by the Department of Labor's Mine Safety and Health Administration ("MSHA"), the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. 29 CFR 2700.31(b) (2009). A Commission Judge considered the motion and evaluated the penalty agreed to by the parties based on the criteria set forth in section 110(i) of the Mine Act, 30 U.S.C. 820(i). If the Judge concluded that the settlement was consistent with the statutory criteria, the Judge issued a decision approving the settlement and setting forth the reasons for approval.

The interim rule changed the current procedure by adding two new requirements. First, in all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), or proceedings against individuals pursuant to section 110(c) of the Mine Act, 30 U.S.C. 820(c), the interim rule requires that a party filing a motion to approve a penalty settlement submit a proposed decision approving settlement ("proposed order") with the motion. Second, it requires the filing party to submit the motion and proposed order electronically. The basic requirements

for content of a motion to approve settlement are relatively unchanged in that the interim rule requires that a movant include in the motion for each violation the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and facts that support the penalty agreed to by the parties. The Commission explained in the preamble to the interim rule that a filing party may set forth this information in the proposed order and incorporate the proposed order by reference in the motion.

The interim rule also includes a new requirement that the party filing the motion must certify that the opposing party has reviewed the motion and has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement. In addition, the interim rule requires that, if a motion had been filed by a CLR on behalf of the Secretary of Labor, the accompanying proposed order must include a provision in which the Judge accepts the CLR to represent the Secretary in accordance with the notice of either limited or unlimited appearance previously filed with the Commission. The Commission has made sample forms for proposed orders approving settlement available on the Commission's Web site (*http://www.fmshrc.gov*).

The interim rule provides that in all penalty proceedings, except discrimination and section 110(c) proceedings, parties must file any settlement motion electronically in accordance with the rule and the Commission's Web site instructions. The Commission provides in the interim rule that a party may file non-electronically only with the permission of the Judge.

The interim rule further requires that a copy of a motion and proposed order be served on the opposing party as expeditiously as possible. In recognition that some parties may not have the capability of being served with the motion and proposed order by e-mail, facsimile transmission, or commercial delivery, the interim rule provides that, in such circumstances, the filing party may serve the motion and proposed order on the opposing party by mail.

The interim rule also provides that if a party filing a motion to approve settlement and proposed order fails to include required information in the motion and proposed order, the Commission will not accept for filing the motion and proposed order. Rather, the Commission will inform the filing party of the need for correction and resubmission.

As previously mentioned, before the interim rule became effective parties were required to include in a motion to approve settlement the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. The final rule provides that such factual support must be submitted in the motion to approve settlement and proposed order. However, in order to minimize any extra work required of parties, the Commission has clarified in the final rule that a filing party need only submit the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties in the proposed order, and may incorporate that factual support by reference in the motion. Thus, the parties need to provide the factual support for a settlement only in one document filed with the Commission, as was the practice before the interim rule became effective.

It is important to emphasize that the Commission intends for each proposed order to be able to stand alone as a description of the settlement and reasons for any approval of the settlement without reference to the motion. Thus, although the motion may be brief and incorporate by reference the factual support set forth in detail in the proposed order, the reverse is not true. A party may not submit a brief order that incorporates by reference the factual support set forth in detail in the motion. If a party submits a motion that contains detailed factual support and a proposed order that merely incorporates by reference the detailed information provided in the motion, the Commission will not accept the motion and proposed order for filing in accordance with the provisions of paragraph (f) of the final rule. The proposed order must set forth the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

Although motions may be submitted in PDF format, it is important that proposed orders not be submitted in PDF format. Judges are unable to make electronic changes to proposed orders that are submitted in PDF format. The Commission will be able to process settlements more efficiently if orders are submitted in a format in which the Judge may easily make any necessary changes.

Commenters have also complained that they are having technical difficulties with the forms available on the Commission's Web site, and that the interim rule is ambiguous as to whether parties are required to use the forms. The Secretary suggested that the final rule should clarify that the proposed order does not have to conform to one of the templates on the Commission's Web site as long as the proposed order includes the required information. The Secretary also commented that the final rule should require that the proposed order include language telling operators where to send penalty checks.

The Commission has clarified in the final rule that parties are not required to use the proposed order forms available on the Commission's Web site. The final rule provides, however, that if a proposed order fails to include pertinent information, the motion and proposed order may be rejected for filing by the Commission in accordance with paragraph (f) of the final rule. The Commission has not included in the final rule a requirement that a proposed order must include language telling operators where to send penalty checks. Such language is provided in the Commission's proposed order forms, however. The Commission notes that parties may include such language in the proposed orders even if they do not use the forms.

As to the certification requirement set forth in the interim rule, the Secretary commented that her attorneys and CLRs have difficulty verifying that operators have actually reviewed the settlement. She suggests that the purpose of the rule, *i.e.,* streamlining the settlement of penalty proceedings, would be better served if the filing party were only required to certify that the opposing party has authorized the granting of the motion and the entry of the proposed order.

In a related comment, a member of the mining community stated that on occasion CLRs have unilaterally filed "joint" settlement motions that have not been reviewed or approved by the operator. The commenter suggested that the Commission should require that any settlement motions must either be signed by both parties' representatives or, prior to filing, a settlement motion and proposed order must be submitted to the opposing party for review at least three business days prior to filing.

The Commission agrees with these comments and has revised the language of the rule accordingly. The final rule provides that the party filing a motion must certify that the opposing party has authorized the granting of the motion and the entry of the proposed order. The final rule does not require a certification that the opposing party has reviewed the motion and proposed order. In order to ensure that an opposing party has reviewed the motion and proposed

order, the Commission has added a provision to the final rule requiring that a settlement motion and proposed order must be served on all parties or if the parties are represented, on their representatives, at least five business days before the motion and proposed order are filed with the Commission. The Commission has included a five-day requirement rather than a three-day requirement in order to provide as much review time as possible to the parties, particularly if the settlement motion and proposed order are served by mail. The Commission notes that both the five-day service requirement and the certification requirement apply in every case where a settlement motion and proposed order are filed.

The Secretary commented that the final rule should clarify that before filing a settlement motion on behalf of the Secretary, a CLR does not need to have obtained Commission authorization to represent the Secretary in that proceeding. The Commission has included that change in the final rule.

One commenter stated that section 110(c) proceedings are frequently consolidated with, and/or are settled with, the related civil penalty proceeding against the operator. The commenter stated that in such circumstances, it makes sense to discuss the settlement of both cases in a single motion. The commenter suggested that section 110(c) proceedings should be covered by the final rule and should not be specifically excluded. The Commission agrees and has made this change. Thus, discrimination cases are the only cases in which a party must submit a hard paper copy of a motion to approve settlement to the Judge that includes for each violation the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and the supporting facts. In discrimination proceedings, a proposed order need not be submitted. Filing and service in discrimination proceedings shall be accomplished in accordance with the provisions of 29 CFR 2700.5 and 2700.7.

Notice and Public Procedure

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") do not apply to rules of agency procedure (*see* 5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on the final rule. The Commission will accept public comments until December 15, 2010.

The Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rule does not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act (5 U.S.C. 801) is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this rule "does not substantially affect the rights or obligations of non-agency parties."

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission amends 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

■ 2. Section 2700.5 is amended by revising paragraph (b) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(b) *Where to file.* Unless otherwise provided for in the Act, these rules, or by order:

(1) Until a Judge has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; facsimile delivery as allowed by these rules (*see* section 2700.5(e)), shall be transmitted to (202) 434–9954.

(2) After a Judge has been assigned, and before a decision has been issued, documents shall be filed with the Judge at the address set forth on the notice of the assignment.

(3) Documents filed in connection with interlocutory review shall be filed with the Commission in accordance with section 2700.76.

(4) After the Judge has issued a final decision, documents shall be filed with the Commission as described in paragraph (b)(1) of this section.

* * * * *

■ 3. Section 2700.31 is revised to read as follows:

§ 2700.31 Penalty settlement.

(a) *General.* A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion. In all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), a settlement motion must be accompanied by a proposed order approving settlement. In discrimination proceedings, a party shall file a motion to approve settlement that includes the factual support described in paragraph (b)(1) of this section, and that shall be filed and served in accordance with the provisions of 29 CFR 2700.5 and 2700.7, respectively. In discrimination proceedings, a party need not file a proposed order.

(b) *Content of motion.*

(1) *Factual support.* A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. Rather than setting forth such information in detail, the motion may incorporate by reference the information which has been included in the accompanying proposed order as required by paragraph (c)(1) of this section.

(2) *Certification.* The party filing a motion must certify that the opposing party has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement.

(c) *Content of proposed order.*

(1) *Factual support.* A proposed order approving a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. Forms for proposed orders approving settlement are available on the Commission's Web site (*http://www.fmshrc.gov*). Although parties are not required to use the forms on the Commission's Web site, if proposed orders fail to include pertinent information, the motion and proposed order may be rejected for filing by the Commission in accordance with paragraph (f) of this section. Proposed

orders shall not be submitted in PDF format.

(2) *Appearance by CLR.* If a motion has been filed by a Conference and Litigation Representative ("CLR") on behalf of the Secretary, the proposed order approving settlement accompanying the motion shall include a provision in which the Judge accepts the CLR to represent the Secretary in accordance with the notice of either limited or unlimited appearance previously filed with the Commission. A CLR does not need to obtain authorization from the Commission to represent the Secretary before the CLR files a motion to approve settlement and proposed order.

(d) *Filing and service of motion accompanied by proposed order.*

(1) *Electronic filing.* A motion and proposed order shall be filed electronically according to the requirements set forth in this rule and instructions on the Commission's Web site (*http://www.fmshrc.gov*). Filing is effective upon the date of the electronic transmission of the motion and proposed order. The transmitting party is responsible for retaining records showing the date of transmission, including receipts.

(i) *Signatures.* Any signature line set forth within a motion to approve settlement submitted electronically shall include the notation "/s/" followed by the typewritten name of the party or representative of the party filing the document. Such representation of the signature shall be deemed to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized. *See* 29 CFR 2700.6.

(ii) *Status of documents.* A motion and proposed order filed electronically constitute written documents for the purpose of applying the Commission's procedural rules (29 CFR part 2700), and such rules apply unless an exception to those rules is specifically set forth in this rule. Any copies of the motion and proposed order which have been printed and placed in the official case file by the Commission shall have the same force and effect as original documents.

(2) *Filing by non-electronic means.* A party may file a motion to approve settlement and an accompanying proposed order by non-electronic means only with the permission of the Judge.

(3) *Service.* A settlement motion and proposed order shall be served on all parties or, if parties are represented, upon their representatives, by the most expeditious means possible and at least five business days before the motion and proposed order are filed with the Commission. If a party cannot be served by e-mail, facsimile transmission, or commercial delivery, a copy of the motion and proposed order may be served by mail. A certificate of service shall accompany the motion and proposed order setting forth the date and manner of service.

(e) *Filing of motion and proposed order prior to filing of petition.* If a motion to approve settlement and proposed order is filed with the Commission before the Secretary has filed a petition for assessment of penalty, the filing party must also submit as attachments, electronic copies of the proposed penalty assessment and citations and orders at issue. If such attachments are filed, the Secretary need not file a petition for assessment of penalty.

(f) *Non-acceptance of motion and proposed order.* If a party filing a motion to approve settlement and a proposed order fails to include in the motion and proposed order pertinent information required by this rule and the Commission's instructions posted on the Commission's Web site, the Commission will not accept for filing the motion and proposed order. Rather, the Commission will inform the filing party of the need for correction and resubmission.

(g) *Final order.* Any order by the Judge approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final order of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed. A Judge may correct clerical errors in an order approving settlement in accordance with the provisions of 29 CFR 2700.69(c).

Dated: November 23, 2010.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 548

Belarus Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Belarus Sanctions Regulations ("BSR") in the Code of Federal Regulations to authorize U.S. persons to engage in otherwise prohibited transactions with two blocked entities, Lakokraska OAO and/or Polotsk Steklovolokno OAO, until May 31, 2011. In addition, OFAC is amending the BSR to make a technical correction to the authority citation.

DATES: *Effective Date:* November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

The Belarus Sanctions Regulations, 31 CFR part 548 ("BSR"), implement Executive Order 13405 of June 16, 2006, "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus" ("E.O. 13405"). Pursuant to E.O. 13405, on May 15, 2008, OFAC designated the entities Lakokraska OAO and Polotsk Steklovolokno OAO, blocking their property and interests in property (73 FR 29849, May 22, 2008). On September 4, 2008, before the publication of the BSR, OFAC issued and posted on its Web site Belarus General License No. 1, which authorized all transactions between U.S. persons and Lakokraska OAO and/or Polotsk Steklovolokno OAO from September 4, 2008, until March 2, 2009. This authorization was subject to the proviso that all property and interests in property of Lakokraska OAO or Polotsk Steklovolokno OAO that previously had been blocked pursuant to E.O. 13405 were to remain blocked. OFAC subsequently amended Belarus General License No. 1 four times to extend its authorization for transactions between U.S. persons and the two entities. The latest of those