

FEDERAL REGISTER: 62 FR 63274 (November 28, 1997)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 723, 724, 845, and 846

Implementation of the Debt Collection Improvement Act of 1996

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, by adjusting for inflation, certain civil money penalties authorized by the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: November 28, 1997.

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I. BACKGROUND

A. THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

In an effort to maintain the deterrent effect of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (the Act) (Pub. L. 101-410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the Act requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter.

Under the amended Act, the inflation adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment which is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The amended Act further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (1) Should apply only to violations that occur after the date the increase takes effect, and (2) should not exceed 10 percent of the penalty indicated.

B. CIVIL MONEY PENALTIES AFFECTED BY THIS ADJUSTMENT

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. The regulations of the Office of Surface Mining

Reclamation and Enforcement (OSM) implementing the CMP provisions of section 518 of SMCRA are located in 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14. Sections 723.14 and 723.15 were promulgated on September 4, 1980 (*45 FR 58783*), sections 845.14 and 845.15 on August 16, 1982 (*47 FR 35640*), and sections 724.14 and 846.14 on February 8, 1988 (*53 FR 3664*). The CMPs have not been adjusted since the regulations were first issued. Since the cost-of-living adjustment described above would exceed 10 percent of the CMP, the adjustments being made to the CMPs by this rule are being limited to a 10 percent increase as directed by section 7 of the amended Act.

II. PROCEDURAL MATTERS

A. Effect in Federal Program States and on Indian Lands

The 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 these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750.

B. Effect on State Programs

Section 518(i) of SMCRA and 30 CFR 840.13(a) require that the civil penalty provisions of each State program contain penalties which are "no less stringent than" those set forth in SMCRA. Following promulgation of the final rule, OSM will evaluate State programs approved under section 503 of SMCRA to determine any changes in those programs that will be necessary. When OSM determines that a particular State program provision should be amended in order to be made no less stringent than the revised Federal regulations, the particular States will be notified in accordance with the provisions of 30 CFR 732.17.

C. 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. OSM has 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. Specifically, this rulemaking is consistent with the statutory authority set forth in the Debt Collection Improvement Act of 1996. In that Act, Congress required that the agency issue the inflation adjustment amendments contained in this rule and provided no discretion to the agency regarding either their substance or their issuance. These same reasons also provide OSM with good cause under *5 U.S.C. 553(d)(3)* of the APA to have the regulation become effective on a date that is less than 30 days after the date of publication in the Federal Register.

D. Executive Order 12866

This rule is not considered a significant regulatory action under the provisions of Executive Order 12866. The rule adjusts OSM's CMPs according to the formula contained in the law. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to these regulations do not engage in prohibited activities and practices, and, as a result, OSM believes 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. Consequently, the amount of the CMPs assessed under the revised schedule are not expected to exceed the threshold contained in Executive Order 12866 for an economically significant rule.

E. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed revision would 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.*). While some penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in issuance of a violation notice and the assessment of a CMP. The aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those who violate the provisions of SMCRA.

F. Unfunded Mandates Reform Act

For purposes of compliance with the Unfunded Mandates Reform Act of 1995, this rule does 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.

G. 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.

H. National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

I. Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule meets the requirements of sections (3)(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (*61 FR 4729*).

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: October 28, 1997.

Sylvia V. Baca, 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: *30 U.S.C. 1201* et seq., Pub. L. 100-34, Pub. L. 101-410, and Pub. L. 104-134.

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

SECTION 723.14 -- DETERMINATION OF AMOUNT OF PENALTY.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
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	2,750
46	2,860
47	2,970
48	3,080

49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

3. In Section 723.15, paragraph (b) is revised by changing the dollar amount "\$750" to "\$825."

PART 724 - INDIVIDUAL CIVIL PENALTIES

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

Authority: *30 U.S.C. 1201* et seq., Pub. L. 100-34, Pub. L. 101-410, and Pub. L. 104-134.

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

SECTION 724.14 -- AMOUNT OF INDIVIDUAL CIVIL PENALTY.

* * * * *

(b) The penalty shall not exceed \$5,500 for each violation. * * *

PART 845 - CIVIL PENALTIES

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

Authority: *30 U.S.C. 1201* et seq., Pub. L. 100-34, Pub. L. 100-202, Pub. L. 100-446, Pub. L. 101-410, and Pub. L. 104-134.

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

SECTION 845.14 -- DETERMINATION OF AMOUNT OF PENALTY.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
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	2,750
46	2,860
47	2,970
48	3,080

49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

8. In Section 845.15, paragraph (b) is revised by changing the dollar amount "\$750" to "\$825."

PART 846 - INDIVIDUAL CIVIL PENALTIES

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

Authority: *30 U.S.C. 1201* et seq., Pub. L. 100-34, Pub. L. 101-410, and Pub. L. 104-134.

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

SECTION 846.14 -- AMOUNT OF INDIVIDUAL CIVIL PENALTY.

* * * * *

(b) The penalty shall not exceed \$5,500 for each violation. * * *