

**FEDERAL REGISTER: 53 FR 3664 (February 8, 1988)**

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

30 CFR Parts 723, 724, 750, 845, 846, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Individual Civil Penalties

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending its Initial and Permanent Regulatory Program procedures to provide for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977.

DATES: Effective March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202/343-5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of the Rule and Public Comments
- III. Procedural Matters

**I. BACKGROUND**

This rule establishes a regulatory scheme for imposing individual civil penalties under section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act), *30 U.S.C. 1201 et seq.* The proposed rule was published on December 24, 1986 (*51 FR 46838*). On April 8, 1987 (*52 FR 11287*) the comment period was reopened and extended until May 8, 1987. Those documents should be consulted for additional background information.

Section 518 of the Act authorizes the Secretary of the Interior to assess civil and criminal penalties for violations of the Act. Under section 518(a) any person who violates any permit condition or any other provision of Title V of the Act may be assessed a civil penalty, not to exceed \$5,000 per violation for each day the violation continues. Section 518(a) requires the Secretary to consider the following criteria in determining the amount of the penalty: (1) The permittee's history of previous violations at the particular surface coal mining operation; (2) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; (3) whether the permittee was negligent; and (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. Under section 518(h) if a violation is not abated within the period set in a notice of violation (NOV) or cessation order, the assessment of a minimum penalty of \$750 for each day during which the violation remains unabated is mandatory.

Under section 518(f) if a violation is committed by a corporate permittee or if a corporate permittee fails or refuses to comply with certain specified orders, then any director, officer or agent of the corporate permittee who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal is subject to the same civil penalties as may be imposed upon the corporate permittee under section 518(a). Section 518(f) of the Act reads in part as follows:

Whenever a corporate permittee violates a condition of a permit \* \* \* or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act \* \* \* any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

In order to distinguish between a penalty assessed against a corporate permittee under section 518(a) and one assessed against a corporate officer, director or agent under section 518(f), OSMRE refers to the former penalty as a "civil penalty" and to the latter as an "individual civil penalty."

The current regulations in 30 CFR Parts 723 and 845 prescribe a point system by which OSMRE calculates the amount of the penalty to be assessed under section 518(a). The assessment system is based on the four criteria set forth in section 518(a), and provides for a waiver of the formula upon a determination by the Director that there are exceptional factors which render the penalty demonstrably unjust. The regulations permit OSMRE to assess separately a civil penalty for each day of a continuing violation, from the date of issuance of an NOV or cessation order to the date set for abatement. Whenever a violation resulting in an NOV or cessation order has not been abated within the prescribed abatement period, OSMRE assesses an additional penalty of not less than \$750 for each day the violation remains unabated. The minimum \$750 penalty is assessed pursuant to section 518(h) and is in addition to the daily civil penalty that may be assessed under the point system pursuant to section 518(a). Under 30 CFR 723.15(b) and 845.15(b), penalties under section 518(h) of the Act may not be assessed for more than 30 days.

Sections 723.15(b) and 845.15(b) further provide that if a violation is not abated within 30 days after issuance of the failure to abate cessation order, OSMRE must take appropriate action pursuant to sections 518(e) (criminal penalties), 518(f) (individual civil penalties), 521(a)(4) (permit suspension or revocation for a pattern of violations), or 521(c) (requests for temporary or permanent injunctions).

On January 31, 1985, Judge Barrington D. Parker of the United States District Court for the District of Columbia issued an order (Revised Parker Order) in the case of Save Our Cumberland Mountains, Inc., et al. v. Clark, et al., No. 81-2134 (D.D.C. 1985). The Revised Parker Order resulted from a settlement agreement entered into by the Secretary. Among other matters, the Revised Parker Order addresses the circumstances under which the Secretary would use his authority under section 518(f) of the Act to impose individual civil penalties on officers, directors and agents of corporate permittees. The Revised Parker Order also requires OSMRE to consider the use of authority under section 518(a) to assess individual civil penalties for each day of a continuing violation, and to propose a regulation governing the use of such authority. The December 24, 1986 rule was proposed in accordance with the Revised Parker Order.

As a result of the Revised Parker Order, OSMRE has examined its existing rules and policies related to the assessment of civil penalties. Most civil penalties are assessed based upon the point system set forth in 30 CFR 723.13 to 723.14 and 30 CFR 845.13 to 845.14. The use of this point system does not appear practical for, nor strictly applicable to, the assessment of individual civil penalties. The point system does not give the Secretary sufficient flexibility to assess a penalty which fairly considers the particular actions or inactions of an individual. For example, Sections 723.13(b)(1) and 845.13(b)(1) consider the history of the permittee's previous violations without respect to the individual's involvement with them.

This rule establishes a regulatory scheme for imposing individual civil penalties under section 518(f) of the Act. It is modeled in part on the regulations of the Mine Safety and Health Administration (MSHA), U.S. Department of Labor. The legislative history of the Act indicates that the enforcement provisions in the Act, including those in section 518(f), were modeled after similar provisions in the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91-173). See S. Rep. No. 128, 95th Cong., 1st Sess. 58 (1977). Section 109(c) of the Federal Coal Mine Health and Safety Act of 1969 is the predecessor of section 110(c) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164), which is administered by MSHA.

Both sections 109(c) and 110(c) provide for the imposition of an individual civil penalty in language nearly identical to that found in section 518(f) of the Act. Consequently, OSMRE has reviewed the regulations of MSHA at 30 CFR Part 100 for guidance in developing Parts 724 and 846, which set forth the manner in which OSMRE will assess individual civil penalties under section 518(f) of the Act.

## **II. DISCUSSION OF THE RULE AND PUBLIC COMMENTS**

### **SECTIONS 723.1 AND 845.1 - SCOPE.**

The rule makes certain conforming changes to Sections 723.1 and 845.1 to indicate that the assessment of an individual civil penalty under section 518(f) of the Act is covered by Parts 724 and 846.

No comments were received on the proposed revisions to these sections. OSMRE has adopted them as proposed.

#### **SECTIONS 723.18 AND 845.18 - EXTENSION OF TIME TO REQUEST A CONFERENCE.**

The rule amends Sections 723.18 and 845.18 to extend the time within which a person may request a conference to review a proposed assessment or reassessment of a civil penalty under section 518(a). The time is extended from the present 15 days from the date a notice or order of proposed assessment or reassessment is mailed to 30 days following the receipt of a notice or order of proposed assessment or reassessment.

No comments were received on the proposed revisions. OSMRE has adopted them as proposed.

#### **SECTIONS 724.1 AND 846.1 - SCOPE.**

Under the rule, Parts 724 and 846 will govern the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Act. Under section 518(f), OSMRE may assess an individual civil penalty against any officer, director or agent of a corporate permittee who willfully and knowingly authorized, ordered, or carried out a violation of a condition of a permit issued pursuant to a Federal Program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act, or who failed or refused to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act.

No comments were received on these sections. OSMRE has adopted them as proposed.

#### **SECTIONS 724.5 AND 846.5 - DEFINITIONS.**

An individual civil penalty under section 518(f) requires knowing and willful conduct on the part of the individual. Neither the Act nor the legislative history define the terms "knowingly" and "willfully." This rule defines the terms in order to provide guidance to the individuals who may be subject to penalty assessments as well as to those who assess individual civil penalties. The rule also contains a definition for the phrase "violation, failure or refusal."

**KNOWINGLY:** Under the definition, an individual acts "knowingly" if he/she knew or had reason to know that he/she authorized, ordered or carried out some act or omission of the corporate permittee which constituted a violation, failure or refusal specified in section 518(f). A person has "reason to know" when he/she has such information as would lead a person exercising reasonable care in his or her position to acquire knowledge of the facts in question or to infer their existence. For example, if a corporate official with responsibility for an operation received a copy of a failure to abate cessation order issued to the operator at the mine site, it would be reasonable to expect that he would investigate to ascertain if the violation had been abated. A corporate officer without responsibility for the operation would not necessarily be expected to find out such details.

This definition is based in part upon the assumption that persons holding the position of officer, director or agent are responsible for the actions which they have authority to control by virtue of the position they hold. OSMRE has adopted the definition as proposed.

Several comments were received on the proposed definition of the term "knowingly." Some commenters objected to the inclusion in the definition of the phrase "had reason to know" and argued that this phrase would incorporate into the definition the concept of imputed or constructive knowledge. The commenters argued that this was not intended by the Congress and stated that in earlier statutes where the Congress intended that knowledge be imputed to parties, it has seen fit to provide specific statutory implementation.

OSMRE disagrees with the commenters and believes its definition of "knowingly" is consistent with its intended use in section 518(f). The definition of "knowingly" contained in this rule is also consistent with the prevailing interpretation of the same term in the individual civil penalty provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c), and its predecessor the Federal Coal Mine Health and Safety Act of 1969 (Mine Safety Act).

In *Secretary of Labor v. Kenny Richardson*, 2 MSHC 1114, 1120 (1981), *aff'd*, *Richardson v. Secretary of Labor*, 689 F.2d 632 (6th Cir. 1982), the Federal Mine Safety and Health Review Commission (the Commission) discussed the question of whether the term "knowingly" as used in the Mine Safety Act should be construed as requiring a showing of actual knowledge. The Commission in affirming the decision of an administrative law judge held that the term "knowingly" is properly construed to mean "knowing or having reason to know," and that a person would have reason to know when he has such information as would lead a person exercising reasonable care to acquire knowledge of the fact in question or infer its existence. The Commission reasoned that the Mine Safety Act has certain humanitarian objectives and that a broad construction of the term "knowingly" is consistent with the remedial intent of the Mine Safety Act. If a person in a position to protect health and safety fails to act on the basis of information that gives him knowledge or reason to know of the existence of a violative condition, he has acted knowingly and in a manner contrary to the remedial nature of the statute.

OSMRE believes that this same reasoning is also valid when construing the meaning of the term "knowingly" as used in section 518(f) of the Act. If a showing of actual knowledge were required, OSMRE would be applying an extremely strict standard to a civil statute whose remedial purpose as stated in section 102(a) of the Act is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations."

Another commenter argued that the "had reason to know" standard conveys the impression that OSMRE assumes that any officer, director, or agent of the corporate permittee should know all the facts arising in the day-to-day operations of a mine. The commenter argued that many corporate officials have prescribed duties relating to specific functions of the corporation and therefore OSMRE cannot assume that all corporate officers or directors have "reason to know."

OSMRE disagrees that the rule is based upon the assumption stated by the commenter. Merely being an officer, director or agent of a corporation will not result in a finding that the officer, director or agent knew or had reason to know. Every officer, director or agent is not required to know every detail of the mining operation. However, he or she is responsible for exercising due care with regard to his or her functions, and for finding out the relevant facts necessary to the performance of those functions. Thus under the definition, an officer, director or agent would have reason to know when he or she has such information as would lead a person exercising reasonable care in his or her position to acquire knowledge of the fact in question or to infer its existence.

**VIOLATION, FAILURE, OR REFUSAL:** This term is defined because it is used in the rule in a number of places. Under the definition, violation means a violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act. Failure or refusal means a failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act. The exceptions for sections 518(b) and 703 are required by section 518(f) of the Act.

Section 518(f) specifically prohibits the Secretary from assessing penalties for failure to comply with an order incorporated in a civil penalty decision rendered under section 518(b), presumably because it would be counter-productive to assess an individual civil penalty for the nonpayment of the original civil penalty assessed against the corporate permittee. In addition, pursuant to section 518(f), the Secretary may not assess an individual civil penalty for failure to obey a decision of the Secretary issued pursuant to section 703 of the Act. Section 703 of the Act prohibits retaliation against any employee who has filed or caused to be filed any proceeding under the Act or against anyone who has or will testify in any such proceeding.

No comments were received on this proposed definition. OSMRE has adopted it as proposed.

**WILLFULLY:** Under the definition an individual acts willfully if he/she does so either "intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements." OSMRE believes that this definition will provide OSMRE maximum flexibility in enforcing the individual civil penalty provision of the Act while keeping well within the bounds of sound statutory construction. In civil statutes the term "willfully" generally refers to an act or omission which is intentional, knowing, voluntary and conscious, as distinguished from an act which is merely accidental or negligent. See, e.g., *Messina Construction Corp. v. OSHA*, 505 F.2d 701 (1st Cir. 1974). Also, the courts have consistently construed "willfully" in civil statutes to encompass conduct which is plainly indifferent to statutory or regulatory requirements. See, e.g., *Alabama Power Co. v. FERC*, 584 F.2d 750, 752 (5th Cir. 1978).

Taken together, the terms "willfully" and "knowingly" do not include conduct or omissions which are honest mistakes or which are merely inadvertent. They include, but are not limited to, conduct or omissions which result from a criminal or evil intent or from a specific intent to violate the law. The knowing and willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or the terms and conditions of a permit. A consistent pattern of performance or failure to perform may also be sufficient to establish the knowing and willful nature of the conduct, where such consistent pattern is neither the result of honest mistake nor mere inadvertency.

Several comments were received on the proposed definition of the term "willfully." Two commenters argued that the phrase "with intentional disregard or plain indifference to legal requirements" should be deleted. They argued that the phrase "intentional disregard" adds an element of knowledge to the definition of "willful" and blurs the distinction between the terms "willfully" and "knowingly". The same commenters also argued that by incorporating the phrase "plain indifference to legal requirements," the meaning of "willful" is expanded into areas of negligent, accidental, or involuntary action, and that when "willful" is used in statutes it is generally intended that such actions are to be distinguished from negligent, accidental or involuntary action.

OSMRE disagrees with the comment that the phrase should be removed. However, to clarify that accidental or unintentional conduct is not willful, OSMRE has modified the proposed definition of "willfully" by changing an "or" to an "and". The effect of the change is to require the conduct to be intentional, voluntary or conscious and that the person acted with intentional disregard or plain indifference to legal requirements.

This definition is consistent with case law on the subject. The term "willfully" as used in civil statutes ordinarily denotes an action or omission which is intentional, knowing, voluntary and conscious, as distinguished from one which is inadvertent, merely negligent, or accidental. The term "willfully," as used in civil penalty statutes, refers to something more than an unwitting failure to comply with a statutory requirement. *Alabama Power Co. v. FERC*, 584 F.2d 750, 754 (5th Cir. 1978). "Willfully" in this context denotes an action taken knowledgeably by someone subject to the statutory provision on civil penalties in disregard of the action's legality. *Prino v. Simon*, 606 F.2d 449, 451 (4th Cir. 1979). Thus, in civil penalty cases, willfulness requires a determination that the individual, knowing that he had a responsibility, acted with intentional disregard for or plain indifference to the requirements established by the statute. See *Alabama Power*, *supra*, 584 F.2d at 752-753; *Prino*, *supra*, 606 F.2d at 451.

In civil penalty actions, the existence of a "willful" statutory violation turns on the defendant's knowledge of his responsibilities at the time he allegedly disobeyed or ignored the statute's provisions. See, e.g., *Alabama Power*, *supra*, at 754. Generally anyone who acts with knowledge that his behavior is illegal is acting "willfully" for purposes of civil penalty sanctions. See *Mawod & Co. v. SEC*, 591 F.2d 588, 595-96 (10th Cir. 1979).

Another commenter pointed out that the discussion in the preamble to the proposed rule was inconsistent with the rule language that was proposed and converted the knowing and willful standard into one of simple negligence. In the preamble it was stated that an "individual acts willfully if he/she does so either intentionally, voluntarily, consciously, or with careless disregard or plain indifference to legal requirements." The definition of "willfully" at 30 CFR 724.5 and 846.5 uses the phrase "intentionally, voluntarily or consciously, and with intentional disregard or plain indifference to legal requirements." The use of the term "careless" in the proposed preamble discussion was incorrect. The discussion in the preamble did correctly indicate, however, that in civil statutes the term "willfully" generally refers to an act or omission which is intentional, knowing, voluntary and conscious, as distinguished from an act which is merely accidental or negligent.

Two commenters objected to the fact that in their view the definition is broader than the definition of "willful violation" currently found in 30 CFR 701.5 and 843.5. In Sections 701.5 and 843.5, "willful violation" is defined as an act or omission by a person who intends the result which actually occurs. OSMRE's definition of "willfully" was selected after reviewing the above cited decisions. Although the definition at Sections 723.5 and 846.5 is narrower than the definition of "willful violation" at Sections 701.5 and 843.5, it is well within the bounds of sound statutory construction.

One commenter argued that a permittee's inability to prevent or remedy a violation should never be considered "knowing and willful." OSMRE believes that a mere inability to prevent or to remedy a violation for reasons beyond the control of a corporate officer, director, or agent would lack the requisite intent necessary for "knowing and willful" conduct.

Another commenter argued that the definition of willfully should reflect that a "violation, failure, or refusal" which arises from a good faith dispute over the appropriate interpretation of a legal requirement, or as to the adequacy of a permittee's efforts to comply with a legal requirement, or to remedy a violation, is not a "knowing and willful" violation. The same commenter also argued that good faith reliance on the advice of legal counsel (as to legal requirements) or competent technical staff (as to the adequacy of measures taken) should negate the "knowing and willful" element.

OSMRE believes that under the definition adopted today, good faith reliance on legal counsel or the advice of technical staff can be introduced as evidence to rebut a charge of a knowing and willful violation, failure or refusal. Any dispute concerning the propriety of the NOV or cessation order should be resolved by petitioning the Department's Office of Hearings and Appeals (OHA) for review pursuant to 43 CFR Part 4. The permittee may also petition OHA for temporary relief from the requirements of the notice of violation or cessation order pursuant to 43 CFR 4.1260. However, if a stay is denied, the permittee must comply with the terms of the notice of violation or cessation order.

One commenter argued that an individual civil penalty should be assessed only if a violation, failure or refusal is both knowingly and willfully authorized, ordered or carried out. OSMRE agrees. Section 518(f) of the Act specifies that the conduct must be "willfully and knowingly authorized, ordered, or carried out."

One commenter argued that the rule should define the term "agent." The commenter argued that while officer and director are well understood legal terms as applied to corporations, "agent" has a wide range of meanings. In its narrowest sense "agent" denotes someone having authority to act on behalf of the corporation in a particular situation, while in its broadest sense it would include everyone who in fact acts on behalf of the corporation without respect to his or her authority. In the former sense "agent" might not include all officers of the corporation while in the latter it could include all employees. The commenter further argued that in the context of section 518(f), "agent" appears to be used in its narrower sense to mean a person who is not an elected officer or director of the corporation, but exercises authority and control over its business as though he or she were.

OSMRE agrees with the commenter that the term "agent" as used in section 518(f) should be interpreted to mean a person who exercises authority and control over a surface coal mining operation, such as a foreman or supervisor, as opposed to an employee who merely acts on behalf of the corporation without respect to his or her actual authority.

The term "agent" has already been decisionally defined in *United States v. Dix Fork Coal Co., et al.*, 692 F.2d 336 (6th Cir. 1982) for the purposes of section 521(c) of SMCRA. In that case the U.S. Court of Appeals for the Sixth Circuit addressed the issue of who should be considered an agent of a corporate permittee under the Act. The Court held that an "agent includes that person charged with the responsibility for protecting society and the environment from the adverse effects of the surface coal mining operation and particularly charged with effectuating compliance with environmental performance standards during the course of a permittee's mining operation." While the rule does not include a definition of the term "agent," OSMRE will apply the Court's analysis to determinations under section 518(f) as to whether an individual is an "agent" of a corporate permittee.

#### **SECTIONS 724.12 AND 846.12 - WHEN A CIVIL PENALTY MAY BE ASSESSED.**

Under Sections 724.12(a) and 846.12(a) of this rule, the Secretary may assess an individual civil penalty whenever a director, officer or agent of a corporate permittee knowingly and willfully authorized, ordered or carried out a violation, failure or refusal as defined in Sections 724.5 and 846.5. Under Sections 724.12(b) and 846.12(b) this penalty will not be assessed against the individual until a cessation order is issued to the corporate permittee for the underlying violation and the cessation order has remained unabated for 30 days. Such a procedure is consistent with the requirements of paragraphs 9 and 12 of the Revised Parker Order, and also with OSMRE's policy of using the assessment of an individual civil penalty as an alternative enforcement mechanism. See 30 CFR 723.15(b)(2) and 845.15(b)(2).

As originally proposed, paragraph (a) stated that an individual civil penalty would be assessed against a corporate official who knowingly and willfully authorized, ordered or carried out (1) the violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulation; or (2) the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act. OSMRE has substituted for paragraphs (a)(1) and (a)(2) the phrase "violation, failure or refusal," which is defined in sections 724.5 and 846.5. The definition of "violation, failure, or

refusal" parallels the opening language of section 518(f), which specifies what conduct would justify the issuance of an individual civil penalty. This substitution was suggested by a commenter and is responsive to the commenter's concerns discussed in the next paragraph.

Several comments were received on this section objecting to the language of proposed paragraph (a)(1). As proposed, paragraph (a)(1) provided that an individual civil penalty would be assessed for the violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulations. The commenters argued that the provisions of proposed paragraph (a)(1) were broader than the requirements of section 518(f) of the Act authorizing the imposition of an individual civil penalty. Section 518(f) of the Act authorizes the imposition of an individual civil penalty only for specific violations which are (1) a violation of a permit condition, (2) failure to comply with an order issued under section 521, and (3) failure to comply with an order in a final decision issued by the Secretary.

OSMRE has modified the rule to account for the commenter's concerns. As previously stated, OSMRE has deleted proposed paragraph (a)(1) from the rule and has substituted the phrase "violation, failure or refusal." The definition of this phrase parallels the language of section 518(f). The result is that the rule as adopted authorizes the imposition of an individual civil penalty only for the reasons specified in section 518(f) of the Act.

As originally proposed, paragraph (a) referenced exceptions which were specified in paragraph (b). Paragraph (b)(2) specified that OSMRE would not assess an individual civil penalty for an order incorporated in a final decision of the Secretary issued pursuant to sections 518(b) or 703 of the Act and the implementing regulations.

The exception in paragraph (b)(2) has not been included in the final Sections 724.12 and 846.12 because it was redundant. Proposed paragraph (b)(2) mirrored the language of section 518(f) and exempted from the issuance of an individual civil penalty a failure to comply with an order incorporated in a final decision of the Secretary issued pursuant to sections 518(b) or 703 of the Act and the implementing regulations. Sections 724.12(a) and 846.12(a) state that an individual civil penalty may be assessed against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal. The phrase "violation, failure or refusal" is defined in the rule at Sections 724.5 and 846.5 and already contains an exception for "an order incorporated in a decision issued under section 518(b) or section 703 of the Act." Thus inclusion of proposed paragraph (b)(2) would duplicate the limit inherent in paragraph (a).

Two commenters stated that the regulations should provide guidelines for the exercise of OSMRE's discretion to assess individual civil penalties in particular cases. One commenter suggested that an individual civil penalty be assessed only where the Act's basic enforcement mechanisms -- the NOV, cessation order and civil penalty assessment -- are inadequate to ensure protection of public health and safety and the environment. Another commenter specifically asked if an individual civil penalty would be assessed in all situations where a cessation order had been issued to a corporate permittee and remained unabated for 30 days.

OSMRE considers the issuance of an individual civil penalty an alternative enforcement mechanism to be used when the basic enforcement mechanisms have not resulted in the abatement of a violation. If a notice of violation or cessation order has not been abated within the abatement period specified in the notice or order, then under Sections 723.15(b) and 845.15(b), OSMRE is required to assess a civil penalty of not less than \$750 for each day the failure to abate continues. Under OSMRE's rules, this penalty may be assessed for up to 30 days. If the violation still remains unabated, then under Sections 723.15(b)(2) and 845.15(b)(2) OSMRE is required to take appropriate alternative enforcement action within 30 days. OSMRE has discretion under Sections 723.15(b)(2) and 845.15(b)(2) to use the alternative enforcement mechanism it considers most appropriate to ensure that abatement occurs or that there will not be a reoccurrence of the failure to abate. OSMRE may file criminal charges (section 518(e)), suspend or revoke a permit (section 521(a)(4)), request an injunction (section 521(c)), and/or assess an individual civil penalty (section 518(f)). OSMRE may use more than one alternative enforcement mechanism, but is not required to do so. In exercising its discretion OSMRE will review each situation on a case-by-case basis to determine the most effective alternative enforcement mechanism to use. Because of the innumerable factual situations that may arise, OSMRE has concluded that the rules should establish the procedures and basic principles for issuing individual civil penalties and that further guidance will be developed over time.

One commenter requested clarification as to whether it is the intent of OSMRE to assess individual civil penalties against a corporate director or officer when the corporation is operating pursuant to a State program and there has been no Federal enforcement of that program pursuant to section 521 of the Act. The commenter stated that as proposed,

Sections 724.12(b) and 846.13(b) could be read to allow OSMRE to assess individual civil penalties without first undertaking such Federal enforcement. The commenter suggested that OSMRE modify the language of Sections 724.12(b)(1) and 846.12(b)(1) to indicate clearly that in such instances an individual civil penalty may be assessed only pursuant to Federal enforcement action pursuant to section 521 of the Act.

In situations involving violations of State-issued permits OSMRE will consider assessing an individual civil penalty under Sections 724.12(b) and 846.12(b) only when OSMRE is exercising its enforcement authority under section 521 of the Act and 30 CFR 722.11, 722.13, or 843.11. OSMRE has added the phrase "by the office" to Sections 724.12(b) and 846.12(b) to respond to the commenter's suggestion and to clarify OSMRE's policy that the cessation order which has been issued is one OSMRE issued.

The same commenter also argued that the language in proposed Sections 724.12(a)(1) and 846.12(a)(1) would be unnecessary if the limitation in paragraph (b)(1) were applied to prevent the assessment of an individual civil penalty until after the issuance of a cessation order. The commenter argued that if the intent under the regulations was to issue an individual civil penalty only after a cessation order had been issued to the corporate permittee and it remained unabated for 30 days, then the language of Sections 724.12(a)(2) and 846.12(a)(2) was sufficient. As originally proposed, paragraph (a)(1) would have authorized the assessment of an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out the violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulation. Paragraph (a)(2) covered violations that arose from the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act.

As previously stated, OSMRE has deleted proposed paragraphs 724.12 (a)(1) and (a)(2) and 846.12 (a)(1) and (a)(2), and has substituted the phrase "violation, failure or refusal" which is defined at Sections 724.5 and 846.5. Paragraphs 724.12(a) and 846.12(a), as modified in the final rule, read in conjunction with paragraphs 724.12(b) and 846.12(b), as modified in the final rule, clearly establish OSMRE's policy of assessing an individual civil penalty as an alternative enforcement mechanism which OSMRE will consider using when a cessation order has been issued to the corporate permittee for an underlying violation and the cessation order has remained unabated for 30 days. This limitation on the exercise of OSMRE's discretion is intended to emphasize the nature of an individual civil penalty as an alternative enforcement mechanism.

One commenter requested clarification as to which corporate representatives may be assessed an individual civil penalty. The commenter argued that penalties should be limited to those persons who were corporate officers, directors, or agents at the time the cessation order was issued to the corporate permittee, or who have since been appointed. The commenter argued that an individual civil penalty should not be assessed against a person who has ceased to be an officer, director or agent of the corporate permittee prior to the issuance of a cessation order.

It is OSMRE's intent to limit the issuance of an individual civil penalty to those directors, officers or agents of a corporate permittee who knowingly and willfully authorized, ordered or carried out (1) a violation by the corporation; or (2) the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act.

A corporate officer, director or agent who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal will not be allowed to insulate himself from liability for his knowing and willful conduct by subsequently resigning his position. If an officer, director or agent knowingly and willfully authorized, ordered or carried out a violation, failure or refusal, OSMRE is authorized by section 518(f) of the Act and these regulations to issue to the individual an individual civil penalty, even if the individual is no longer employed by the corporate permittee at the time the cessation order is issued or at a later time. As long as OSMRE can establish the necessary elements, an individual civil penalty may be issued regardless of the individual's subsequent status.

#### **SECTIONS 724.14 AND 846.14 - AMOUNT OF INDIVIDUAL CIVIL PENALTY.**

Section 518(f) of the Act subjects a corporate officer, director or agent to the same civil penalty that may be imposed upon a person or corporation under section 518(a) of the Act. OSMRE interprets this to mean that the relevant criteria of section 518(a) are to be applied, and that the daily ceiling in section 518(a) on the amount of the penalty must be observed when assessing an individual civil penalty. OSMRE does not interpret section 518(a) as requiring the amount of

the penalty assessed against the individual to be the same as that assessed against the corporation. This interpretation is reasonable since all of the criteria used in assessing a section 518(a) penalty against a corporation might not apply to a corporate official charged under section 518(f).

This interpretation of the phrase "subject to the same civil penalties" is consistent with how the Department of the Interior interpreted the same phrase in section 109(c) of the Mine Safety Act when it administered that law from 1969 to 1977. Section 109(c) of the Mine Safety Act is the law after which section 518(f) of the Act was modeled. This also is consistent with the interpretation of the same phrase by MSHA. In *MSHA v. Propst and Stemple, 2 FMSHRC 304 (1981)*, the Federal Mine Safety and Health Review Commission upheld individual civil penalties assessed against a supervisor and a foreman. Both penalties were larger than the penalty assessed against the corporate employer. Thus, applying the same criteria to individuals instead of a corporation may lead to a different, and even higher, individual civil penalty for the same underlying corporate violation.

Sections 724.14(a) and 846.14(a) of the rule list the criteria, discussed in detail below, which OSMRE will consider in assessing individual civil penalties. Any one criterion can be used as the primary basis for determining the amount of an individual civil penalty.

For example, if an individual repeatedly caused an administrative violation such as failure to allow an inspector access to the mine site, there might be no irreparable harm to the environment or appreciable costs of reclamation associated with such violation. OSMRE, however, has the discretion to base the amount of a penalty primarily upon the individual's history of violations at the particular permit site. Consequently, OSMRE would be able to discourage flagrant disregard for the provisions of the Act in accordance with the plain intent of section 518(f).

Under Sections 724.14(a)(1) and 846.14(a)(1), it is the individual's own history of authorizing, ordering or carrying out violations, failures or refusals at the particular surface coal mining operation which will be considered when assessing a penalty. OSMRE believes that a reasonable reading of sections 518(a) and 518(f) together supports this result.

A central goal of the Act and its implementing regulations is the protection of the environment from the adverse effects of surface coal mining operations (see section 102(a) of the Act). In many instances, a chief consequence of a corporate permittee's violation of the Act and subsequent failure or refusal to abate such violation is environmental damage. Section 518(a) directs OSMRE to consider the seriousness of the underlying violation when assessing an individual civil penalty.

OSMRE believes that if a violation leads to environmental damage, the extent of the damage is to be considered. One accurate indicator of its extent is the amount of money it will cost to abate the violation and/or reclaim the affected area. Accordingly, in measuring the harm to the environment pursuant to the criteria in Sections 724.14(a)(2) and 846.14(a)(2), OSMRE can base its assessment, as a whole or in part, upon the estimated cost to repair the damage caused by a failure to abate the violation.

OSMRE recognizes that in many cases the harm caused by the permittee's violation, failure or refusal cannot be repaired. Accordingly, Sections 724.14(a)(2) and 846.14(a)(2) will allow OSMRE, when assessing individual civil penalties, to consider that an individual has taken an action which has caused "irreparable damage to the environment," as defined at 30 CFR 701.5.

Section 518(a) also directs that the health and safety of the public be considered in the civil penalty assessment process. Accordingly, this criterion also is incorporated into the rule in Sections 724.14(a)(2) and 846.14(a)(2).

In the case of a civil penalty assessment against a permittee, section 518(a) requires the Secretary to consider whether the permittee was negligent. OSMRE believes that this criterion is not directly applicable to the assessment of individual civil penalties because section 518(f) of the Act requires knowing and willful conduct, which goes beyond merely negligent behavior.

Finally, section 518(a) requires the Secretary to consider the demonstrated good faith of a permittee in attempting to achieve rapid compliance after notification of a violation. Sections 724.14(a)(3) and 846.14(a)(3) establish this criterion as a factor to be considered in assessing an individual civil penalty, but reference "violation, failure and refusal" rather than just "violation."

Sections 724.14(b) and 846.14(b) give OSMRE broad discretion to assess a separate individual civil penalty for any or all days of a continuing violation, failure or refusal, from the date of service of the NOV, cessation order or other order until the abatement of the violation or compliance with any final order or decision. The authority for this requirement derives from the reference in section 518(f) to section 518(a), which allows OSMRE to consider each day of a continuing violation a separate violation. In determining whether to assess separate penalties for continuing violations, failures or refusals, the rule requires OSMRE to consider the factors in Sections 724.14(a) and 846.14(a).

While the rule allows the assessment of a separate individual civil penalty for any or all days of a continuing violation, failure or refusal, from the date of service of the NOV, cessation order or other order, in some instances a willful and knowing refusal to comply may not be provable until the period set for abatement has expired. For example, if the initial notice of violation resulting from negligence on the part of the corporate permittee was served on day 1, and a failure-to-abate cessation order was served on the corporate permittee and corporate president on day 5, and the violation eventually was abated on day 45, OSMRE would be able to assess an individual civil penalty on a daily basis for 40 days (from day 5 thru day 45). OSMRE would not assess an individual civil penalty from day 1 through day 4 because the violation was the result of negligence, and not knowing and willful conduct. A knowing and willful failure or refusal can be established from day 5, when the corporate president was served a copy of the cessation order. Assessment of the individual civil penalty could not occur until after day 36, the thirtieth day the cessation order remained unabated.

Several comments were received on Sections 724.14 and 846.14. One commenter was concerned with the manner in which the individual's history of authorizing, ordering or carrying out previous violations, failures, or refusals would be factored into the calculations. The commenter was concerned that the history factor would unfairly penalize large operators who continued mining operations at one location over a long period of time, and accrued a relatively large number of violations per permit. The commenter suggested that a more reliable indicator of the kind of abuse section 518(f) was intended to check would be the number of separate corporate entities behind which the individual has committed knowing and willful violations.

OSMRE does not agree. Sections 724.15(a)(1) and 846.15(a)(1) specifically state that the individual's history of previous violations, failures or refusals at the particular surface coal mining operation must be considered. Therefore, even if the permittee/operator has been mining at the particular site for a number of years, it is only the knowing and willful violations of the particular corporate official at the particular site that will be considered, and not the number of violation notices received by the permittee at the particular site, or by the corporate official at other permitted sites. OSMRE considers the conduct of the individual at a particular site rather than at all mining operations over which the individual has control because the language of section 518(a) specifically states that it is the history at the particular site which should be considered as a factor.

One commenter stated that the seriousness of a violation in terms of the extent of damage that is caused is the same regardless of the individual's culpability and therefore, the amount of the penalty attributable to the seriousness of the violation should not be more for the penalty assessed against the individual under Parts 724 and 846 than it would be for the penalty assessed against the corporate permittee under the point system of Parts 723 and 845.

OSMRE does not agree with the commenter's approach of dissecting a penalty into components. OSMRE did not propose to apply the point system in Part 845 to individual civil penalties because a precise correlation does not exist for all of the factors. As to the specific example raised by the commenter, the damage occurring to the environment may increase substantially between the time the corporation is issued an NOV or cessation order, and the time an individual civil penalty is assessed against the corporate official for knowingly and willfully failing or refusing to order the corporation to comply. The initial damage to the environment may be the result of a negligent act on the part of the corporation, while the continuing damage to the environment may result from the corporate official's knowing and willful failure to order abatement. OSMRE therefore would be justified in assessing a higher penalty against the corporate official because the continuing damage to the environment is the result of knowing and willful conduct. Moreover, the penalty assessed against the corporate permittee under the point system for the seriousness of the violation in many instances may not cover the actual cost to repair the damage to the environment. Also, if the same penalty assessed against the corporate permittee were assessed against the officer, director or agent, the amount might be insufficient to act as a deterrent to a knowing and willful failure or refusal to order the corporate permittee to comply with an NOV or cessation order.

Two commenters were concerned that when assessing the seriousness of the violation, failure or refusal OSMRE would use the cost of reclamation as the amount of the individual civil penalty. Another was concerned that using the cost of reclamation when calculating the penalty would result in the penalty being equal to or greater than the cost of reclamation. Another commenter suggested that the relative magnitude of the reclamation costs should be considered a measure of the seriousness of the violation only.

When considering seriousness, OSMRE intends to use the cost the individual would incur in abating the violation, failure or refusal as a key component in determining the penalty. In some instances this will result in the individual civil penalty equaling or exceeding the cost of abatement. Assessment of a proposed individual civil penalty in such a high amount will act as an incentive for the individual to correct the violation, which would enable OSMRE or the regulatory authority to withdraw the proposed penalty under Sections 724.18(c) and 846.18(c).

One commenter was particularly concerned with the provisions in Sections 724.14(b) and 846.14(b) which allow a separate assessment for each day of a continuing violation. The commenter suggested that Sections 724.12 and 846.12 be amended by the addition of criteria to determine when separate assessments will be made for each day of a continuing violation. As examples of appropriate criteria, the commenter suggested: (1) Whether environmental damage continues to be caused by the violation, failure, or refusal from its inception until the abatement of the violation; and (2) whether the amount of the individual civil penalty assessed by the use of the criteria set forth in proposed Sections 724.14(a) and 846.14(a) would be so inadequate under the circumstances as to be manifestly unjust or inadequate to deter future violations, failures or refusals by individuals in control of corporate permittees.

OSMRE has added language to Sections 724.14(b) and 846.14(b) to clarify that an individual civil penalty under section 518(f) is limited by section 518(a) to a maximum amount of \$5,000 per violation per day. However, OSMRE believes that the regulations as written contain adequate criteria for determining when and how an individual civil penalty will be assessed and what factors are to be considered in determining the amount of the penalty. While criteria similar to those suggested by the commenter may be considered by OSMRE in determining whether to assess a penalty on a daily basis and thereby increase the amount of the penalty, OSMRE believes that some discretion should be retained and that the regulations need not contain detailed procedures or guidelines for such calculations. OSMRE intends to develop guidelines for the assessment of individual civil penalties which will assist those assessing an individual civil penalty in determining when an assessment is appropriate and the amount to be assessed. The guidelines will be made available to the state regulatory authorities and will help to insure consistency in the assessment process.

OSMRE notes that the MSHA regulations at 30 CFR 100.5 allow MSHA to waive its penalty/point provisions when calculating a penalty against a corporate official because "some types of violations may be of such a nature or seriousness that it is not possible to determine an appropriate penalty under these provisions." The MSHA regulations simply provide that when MSHA determines that a civil penalty should be assessed against a corporate official, MSHA will take into account the statutory criteria and issue its findings and assessment in narrative form. OSMRE's approach is consistent with that of MSHA.

#### **SECTIONS 724.17 AND 846.17 - PROCEDURES FOR ASSESSMENT OF INDIVIDUAL CIVIL PENALTY.**

Under Sections 724.17(a) and 846.17(a) of the rule, OSMRE will serve a notice of proposed individual civil penalty assessment on the individual who is to be assessed a penalty. The notice of proposed assessment will include a narrative setting forth the reasons for the civil penalty and the amount to be assessed. OSMRE intends that the narrative statement contain detailed information concerning the nature of the violation, failure or refusal, why OSMRE believes it was the result of knowing and willful conduct on the part of the officer, director or agent, and other information as appropriate establishing a justification for assessment of the penalty.

Under Sections 724.17(b) and 846.17(b), the proposed assessment will become a final order of the Secretary 30 days after it is served unless within the 30-day period the individual files a petition for review or agrees to a schedule or plan for the abatement or correction of the violation. Unlike Sections 723.19(a) and 845.19(a), which cover other civil penalty assessments, this rule does not require an individual to prepay the penalty before he or she appeals. The Act does not mandate prepayment of an individual civil penalty. Because no prepayment is required, the rule does not contain a provision for assessment conferences. A notice of proposed individual civil penalty assessment can be appealed to an

administrative law judge, and then, under the OHA rules, to the Interior Board of Land Appeals at its discretion. The address of OHA has been added to the final rule to assist those desiring to file an appeal.

The OHA procedures for the administrative review of a proposed individual civil penalty assessment were published in the Federal Register on December 24, 1986 (*51 FR 46848*) as a proposed rule. It is expected that the final OHA procedural rule will be published in the Federal Register by March 9, 1988 and will be codified at 43 CFR 4.1300 when published.

For purposes of serving notices of proposed individual civil penalty assessment and final orders under Sections 724.17(c) and 846.17(c), service is considered sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint. This will ensure that future issues concerning service will be minimized and resolved in a uniform manner.

The final rule differs from proposed Sections 724.17 and 846.17 in that the word "proposed" has been added to the term "notice of individual civil penalty assessment" to characterize the notice more accurately, since it does not become a final order until 30 days after service. The same change also has been made in other sections of the rule where appropriate.

One commenter suggested that the rule contain provisions requiring that copies of the underlying NOV and cessation order which provide the basis for the individual civil penalty be attached to the narrative statement that is required by Sections 724.17(a) and 846.17(a). OSMRE has adopted the suggestion and added language to Sections 724.17(a) and 846.17(a) requiring that copies of the underlying NOV and cessation order be attached to the narrative statement.

One commenter requested that the rule provide an opportunity for an assessment conference in addition to the right to petition OHA under Sections 724.18 and 846.18. The commenter argued that this would avoid administrative waste and inconvenience by allowing corporate officials to resolve disputes at a conference rather than requesting a hearing with OHA. The commenter argued that MSHA at 30 CFR 100.6 provides for an assessment conference and that OSMRE should also do so.

OSMRE has not adopted the suggestion. The rules provide an adequate opportunity for administrative review through OHA. No need exists to create an additional level of administrative review in OSMRE. As was previously stated, the corporate official is not required to pre-pay the assessment as a prior condition to requesting a hearing with OHA; thus no due process violation exists. Moreover, the notice of proposed assessment against the corporate official will contain a detailed narrative explanation of the reasons for the assessment and the amount assessed, so that the corporate official will clearly understand why OSMRE believes that an individual civil penalty is justified. It has been OSMRE's experience with corporate violations that almost everyone requests both an assessment conference and a hearing with OHA, so that rather than eliminate administrative waste and inconvenience a conference simply would add another step in the process and increase the government's administrative costs. Finally, an individual civil penalty will be assessed only for knowing and willful conduct. Questions concerning such conduct may be better resolved by an administrative law judge, rather than an assessment conference officer. With regard to the commenter's assertion that MSHA provides for an assessment conference, the conference provided for by MSHA's regulations at 30 CFR 100.6 is for the purpose of reviewing the violation, not the proposed penalty assessment. The penalty assessment against the corporate official is reviewed under 30 CFR 100.7 directly by the Federal Mine Safety and Health Review Commission, which is the counterpart to OHA.

#### **SECTIONS 724.18 AND 846.18 - PAYMENT OF PENALTY.**

Under Sections 724.18(a) and 846.18(a), if pursuant to Sections 724.17(b) and 846.17(b) no petition for review is filed and no agreement is entered into, payment of the penalty will become due to OSMRE upon issuance of a final order.

Sections 724.18(b) and 846.18(b) provide that the penalty shall be due upon issuance of the order if the individual named in a notice of proposed civil penalty assessment files a petition for administrative review as provided in Sections 724.17(b) and 846.17(b), and if the final administrative review results in a final order affirming, increasing, or decreasing the proposed penalty.

Under Sections 724.18(c) and 846.18(c), if OSMRE and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, the individual named in the notice of proposed

individual civil penalty assessment may postpone payment until receiving either a final order from OSMRE stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

New Sections 724.18(d) and 846.18(d) have been added to the rule to clarify that delinquent penalties are subject to the Debt Collection Act of 1982 (Pub. L. 97-365). Under these sections, if the penalty is not paid within 30 days after the issuance of a final order assessing an individual civil penalty, the penalty will be considered delinquent and will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in 30 CFR 870.15 (e)(1) through (e)(5). Delinquent penalties are subject to late payment penalties specified in 30 CFR 870.15(f) and processing and handling charges specified in 30 CFR 870.15(g). Because of the 30 day grace period provided by these delinquent payment procedures, the due dates for payment of penalties under Sections 724.18(b) and 846.18(b) and 724.18(c) and 846.18(c) have been changed from the proposed time of 30 days after issuance to the date of issuance of the final order. Thus, under the procedures of Sections 724.18(d) and 846.18(d), even though payment is due upon issuance of a final order, the individual will have the same 30 day grace period for payment of the individual civil penalty before being charged interest as was provided in the proposed rules.

One commenter requested more elaboration of the phrase "that abatement is satisfactory and the penalty has been withdrawn," which appears in Sections 724.18(c) and 846.18(c). The commenter also asked under what circumstances the penalty can be withdrawn, and if it can be withdrawn, why was it even assessed at the earlier stage. The purpose of the individual civil penalty rule is not simply to assess and collect penalties, but to insure that the requirements of the Act are met. In part, OSMRE intends to propose the assessment of an individual civil penalty as an incentive to an officer, director or agent to authorize, order or carry out the abatement of a violation. It should be understood that an individual civil penalty is assessed against the officer, director, or agent of a corporate permittee and not against the corporate permittee. Therefore it is the individual and not the corporation that is liable for payment. OSMRE intends in some instances to propose an individual civil penalty which equals or exceeds the cost of abating the violation under the theory that it would be more economical for the corporate official to order the corporate permittee to abate the violation than to pay the penalty or, if the corporate permittee is now defunct, to abate the violation himself rather than pay an individual civil penalty that would be assessed for a sum greater than the cost of abatement. If the violation is abated prior to the issuance of a final order, it may be appropriate for OSMRE to withdraw the notice of proposed assessment.

As originally proposed, Sections 723.18(a) and 846.18(a) specified that if a notice of individual civil penalty assessment becomes a final order, the penalty shall be due upon service of a final order on the individual. In the final rule, OSMRE has substituted the word issuance for the word service in order to eliminate the need to send the final order to the individual by certified mail or to have it personally served. OSMRE believes that issuance of the final order is sufficient to satisfy the requirements of the Act and to provide due process to the individual. In every instance the notice of proposed individual civil penalty has to be served upon the individual. This action confers jurisdiction over the individual and is the act from which the individual's rights derive. An individual served with a notice of proposed individual civil penalty has the opportunity to contest the individual civil penalty, to pay the individual civil penalty or to enter into an abatement agreement. Issuance of the final order confers no additional rights and service of the final order serves no useful purpose. The regulations in Sections 723.17(b) and 846.17(b) specify that the notice of individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual of the notice of individual civil penalty assessment unless (1) the individual files within 30 days of service of the notice of individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals; or (2) the Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of the individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal. Except for the substitution of the term "issuance" for the term "service," OSMRE has adopted Sections 724.18 and 846.18 as proposed.

## **OTHER COMMENTS**

One commenter was concerned that the rule would make large companies "easy targets" for examination and enforcement actions, and burden them to demonstrate innocence. OSMRE disagrees. These provisions merely provide procedures for a statutorily authorized enforcement action. The extent of the burden does not depend upon the size of

the company but rather upon the conduct of individuals. The rule is directed only at officers, directors and agents of a corporate permittee who knowingly and willfully authorize, order or carry out a violation, failure or refusal. As a further limiting factor, when the individual civil penalty would be based upon a situation where a corporate permittee received a notice of violation, the rule requires that an individual civil penalty be assessed only after a cessation order has been issued to the corporate permittee and remains unabated for 30 days. A corporate permittee's obligations are not changed by these individual civil penalty rules. It must abate the violations within the period prescribed. If it does so, an individual civil penalty will not be assessed. If a company has been issued a cessation order and has failed to abate the violation within 30 days, then the conduct of the company and its officials must be scrutinized. If OSMRE believes that good reason exists for the assessment of an individual civil penalty, a corporate official justifiably may be called upon to account for his knowingly and willfully authorizing, ordering or carrying out a violation, failure or refusal.

One commenter argued that because of the relationship between this proposal and the previously proposed "ownership and control" rule, this rule cannot be adequately examined until the definitions of ownership and control are finalized. The commenter requested that the comment period on this proposal be reopened for a minimum of 30 days after publication of the final rule on ownership and control. OSMRE disagrees. The "ownership and control" rule does not define or determine who is an officer, director or agent of a corporate permittee for the purposes of the issuance of an individual civil penalty under section 518(f). Each rule may be commented upon and promulgated independently of the other.

One commenter questioned the need for an individual civil penalty regulation in the Federal initial regulatory program since permanent programs are now in effect in all States with coal mining operations. OSMRE is incorporating Part 724 into the regulations to supplement Section 723.15(b)(2) of the initial regulatory program. That section provides for the issuance of an individual civil penalty but does not contain any procedures. Outstanding cessation orders issued under the initial regulatory program may continue to result in the issuance of individual civil penalties. If such penalties are issued, section 518 of the Act and Part 724 of the regulations will be cited as authority.

#### **EFFECT IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS**

The rule will apply through cross-referencing to the following Federal program States: 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 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. No comments were received concerning any unique conditions which exist in any of these States which would have required changes to the national rules or State-specific amendments to any or all of the Federal programs. The rules will also apply through cross-referencing in 30 CFR Part 750 to surface coal mining and reclamation operations on Indian lands.

#### **EFFECT OF RULE IN STATES WITH PRIMACY**

Pursuant to 30 CFR 732.17(d), OSMRE will notify States with approved programs of their program provisions which need amendment to remain no less stringent than the Act and no less effective than these Federal regulations. Section 518(i) of the Act specifies that "[a]s a condition of approval of any State program \* \* \* the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section and shall contain the same or similar procedural requirements relating thereto."

One commenter argued that a State regulatory authority need not modify its regulations to incorporate the procedures contained in these rules if the State statute confers adequate authority for the issuance of an individual civil penalty without the need for implementing regulations. The commenter made reference to the fact that State programs are not required to incorporate the point system utilized by OSMRE in Parts 723 and 845 of the regulations, and therefore should not be required to incorporate the requirements of these rules.

The question of whether a State is required to incorporate a point system for penalties was litigated in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144 (D.D.C. 1980). The court held that section 503(a)(7) of the Act requires a State program to meet the stringency standards of OSMRE's regulations so long as OSMRE's regulations are not inconsistent with the Act or arbitrary or capricious. The court noted that neither section 518(i) nor the procedures enforcing those penalties refer to a point system; therefore the court held that it was arbitrary

to require the States to exactly parallel the Secretary's penalty system. However, the court also held that a State must nonetheless incorporate the four criteria enumerated in section 518(a) within its own penalty system.

OSMRE has reviewed its regulations in light of the comment and the court's holding and has concluded that portions of these rules establish penalties, while other portions establish procedural requirements relating to such penalties. The requirements of section 518(i) thus will apply to State program individual civil penalty provisions. OSMRE will evaluate State programs accordingly.

One commenter suggested that OSMRE should use a point system for determining the amount of an individual civil penalty. OSMRE has not adopted the suggestion. As discussed above, the use of a point system does not appear practical for, nor strictly applicable to the assessment of individual civil penalties. The point system does not give the Secretary sufficient flexibility to assess a penalty which fairly considers the particular actions or inactions of an individual.

### **III. PROCEDURAL MATTERS**

#### **Federal Paperwork Reduction Act**

There are no information collection requirements in the rule which require approval by the Office of Management and Budget under *44 U.S.C. 3507*.

#### **Executive Order 12291**

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The rule will not add any new regulatory burden on the coal industry. It merely establishes procedures for the assessment of an individual civil penalty already authorized by section 518(f) of the Act and Sections 723.15(b)(2) and 845.15(b)(2) of the implementing regulations. The cost or economic effect of the final rule will be minimal or nonexistent so long as operators comply with requirements or take corrective action in a timely manner.

#### **Regulatory Flexibility Act**

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that the rule will not have a significant economic impact on a substantial number of small entities. The rule governs the assessment of civil penalties personally upon individual corporate officers, directors or agents for violations of certain provisions of the Act rather than upon the corporate entities engaged in coal mining. No burden would be imposed upon entities operating in compliance with the Act.

#### **National Environmental Policy Act**

OSMRE has prepared an environmental assessment, and has made a finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), *42 U.S.C. 4332(2)(C)*. The environmental assessment is on file in the OSMRE Administrative Record at the address previously specified (see "ADDRESSES").

#### **Author**

The principal author of this rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202-343-5241 (Commercial or FTS).

### **LIST OF SUBJECTS**

#### **30 CFR Part 723**

Administrative practice and procedure, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

#### **30 CFR Part 724**

Administrative practice and procedure, Law enforcement, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 750

Indian lands, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Law enforcement, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 910

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Penalties, Surety bonds, Surface mining, Underground mining.

30 CFR Part 912

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 921

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

30 CFR Part 922

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

30 CFR Part 933

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 937

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

30 CFR Part 939

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

30 CFR Part 941

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 947

Intergovernmental relations, Surface mining, Underground mining.

For the reasons discussed in the preamble 30 CFR is amended by adding Parts 724 and 846, and by revising Parts 723, 750, 845, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 as set forth below.

Date: November 20, 1987.

J. Steven Griles, Assistant Secretary -- Land and Minerals Management.

**SUBCHAPTER B -- INITIAL PROGRAM REGULATIONS**

**PART 723 -- CIVIL PENALTIES**

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

Authority: Surface Mining Control and Reclamation Act of 1977, Sections 201, 501, 518 (*30 U.S.C. 1211, 1251, 1268*) and Pub. L. 100-34.

2. Section 723.1 is revised to read as follows:

**SECTION 723.1 - SCOPE.**

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations, except for the assessment of individual civil penalties under section 518(f), which is covered by Part 724. This part governs when a civil penalty is assessed and how the amount is determined, and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under Part 722 of this chapter during a Federal inspection.

3. Section 723.18(a) is revised to read as follows:

**SECTION 723.18 - PROCEDURES FOR ASSESSMENT CONFERENCE.**

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

\* \* \* \* \*

4. In Subchapter B, Part 724 is added to read as follows:

**PART 724 -- INDIVIDUAL CIVIL PENALTIES**

Section	
724.1	Scope.
724.5	Definitions.
724.12	When an individual civil penalty may be assessed.
724.14	Amount of individual civil penalty.
724.17	Procedure for assessment of individual civil penalty.
724.18	Payment of penalty.

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*); and Pub. L. 100-34.

**SECTION 724.1 SCOPE.**

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

**SECTION 724.5 - DEFINITIONS.**

For purposes of this part:

KNOWINGLY means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

VIOLATION, FAILURE OR REFUSAL means --

(1) A violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

WILLFULLY means that an individual acted (1) either intentionally, voluntarily or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

#### **SECTION 724.12 - WHEN AN INDIVIDUAL CIVIL PENALTY MAY BE ASSESSED.**

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

#### **SECTION 724.14 - AMOUNT OF INDIVIDUAL CIVIL PENALTY.**

(a) In determining the amount of an individual civil penalty assessed under Section 724.12, the Office shall consider the criteria specified in Section 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) the seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

#### **SECTION 724.17 - PROCEDURE FOR ASSESSMENT OF INDIVIDUAL CIVIL PENALTY.**

(a) Notice. The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 et seq.; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) Service. For purposes of this section, service is sufficient if it would satisfy Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint.

#### **SECTION 724.18 - PAYMENT OF PENALTY.**

(a) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 et seq., the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) Abatement agreement. Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in Sections 870.15 (e)(1) through (e)(5) of this chapter. Delinquent penalties are subject to late payment penalties specified in Section 870.15(f) of this chapter and processing and handling charges specified in Section 870.15(g) of this chapter.

#### **SUBCHAPTER E -- INDIAN LANDS PROGRAM**

#### **PART 750 -- REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS**

5. The authority citation for Part 750 is revised to read as follows:

Authority: *30 U.S.C. 1201-1328; 5 U.S.C. 301; and Pub. L. 100-34.*

6. Section 750.18(a) is revised to read as follows:

#### **SECTION 750.18 - INSPECTION AND ENFORCEMENT.**

(a) Parts 842, 843, 845 and 846 of this chapter and the hearings and appeals procedures of 43 CFR Part 4 are applicable on Indian lands.

\* \* \* \* \*

**SUBCHAPTER L -- PERMANENT PROGRAM ENFORCEMENT AND INSPECTION AND ENFORCEMENT PROCEDURES**

**PART 845 -- CIVIL PENALTIES**

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

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*); and Pub. L. 100-34.

8. Section 845.1 is revised to read as follows:

**SECTION 845.1 - SCOPE.**

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Federal Enforcement), except for the assessment of individual civil penalties under section 518(f), which is covered in Part 846.

9. Section 845.18(a) is revised to read as follows.

**SECTION 845.18 - PROCEDURES FOR ASSESSMENT CONFERENCE.**

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

\* \* \* \* \*

10. In Subchapter L, Part 846 is added to read as follows:

**PART 846 -- INDIVIDUAL CIVIL PENALTIES**

Section	
846.1	Scope.
846.5	Definitions.
846.12	When an individual civil penalty may be assessed.
846.14	Amount of individual civil penalty.
846.17	Procedure for assessment of individual civil penalty.
846.18	Payment of penalty.

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*); Pub. L. 100-34.

**SECTION 846.1 - SCOPE.**

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

**SECTION 846.5 - DEFINITIONS.**

For purposes of this part:

KNOWINGLY means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

VIOLATION, FAILURE OR REFUSAL means --

(1) A violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

WILLFULLY means that an individual acted

(1) either intentionally, voluntarily or consciously, and

(2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

#### **SECTION 846.12 - WHEN AN INDIVIDUAL CIVIL PENALTY MAY BE ASSESSED.**

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

#### **SECTION 846.14 - AMOUNT OF INDIVIDUAL CIVIL PENALTY.**

(a) In determining the amount of an individual civil penalty assessed under Section 846.12, the Office shall consider the criteria specified in section 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

#### **SECTION 846.17 - PROCEDURE FOR ASSESSMENT OF INDIVIDUAL CIVIL PENALTY.**

(a) Notice. The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 et seq.; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) Service. For purposes of this section, service is sufficient if it would satisfy Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint.

#### **SECTION 846.18 - PAYMENT OF PENALTY.**

(a) No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 et seq., the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) Abatement agreement. Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in Sections 870.15 (e)(1) through (e)(5) of this chapter. Delinquent penalties are subject to late payment penalties specified in Section 870.15(f) of this chapter and processing and handling charges specified in Section 870.15(g) of this chapter.

#### **SUBCHAPTER T -- PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE**

11. The authority citations for Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, are amended as follows:  
Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq.; and Pub. L. 100-34.

#### **PARTS 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 -- [AMENDED]**

12. Parts 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 are amended by adding to each part the following section XXX .846 (the wording is the same for each affected part):

#### **XXX .846 - INDIVIDUAL CIVIL PENALTIES.**

Part 846 of this chapter, Individual Civil Penalties, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

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