

civil penalties for inflation at least once every four years. MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains why the rule is inappropriate, including challenges to the rule's underlying premise or approach, or why it will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, we will consider whether it warrants a substantive response in a notice and comment process. If we receive such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**.

II. Rulemaking Background

Sections 105(a) and 110 of Mine Act require us (MSHA) to propose a civil penalty assessment for each violation of the Mine Act or a mandatory safety and health standard promulgated under the Mine Act. The Mine Act originally provided that—

(1) The maximum penalty for each violation would not exceed \$10,000;

(2) The maximum penalty for failure to correct a violation cited under § 104(a) within the period permitted for its correction would not exceed \$1,000 for each day that the violation continued to exist; and

(3) The maximum penalty for a miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials would not exceed \$250 for each occurrence of such violation.

On May 30, 1978 (43 FR 23514), MSHA promulgated its first regulations relating to civil penalty assessments under the Mine Act. These regulations included a Penalty Conversion Table for regular assessments based on the six criteria enumerated in 30 CFR 100.3(a).

On May 21, 1982 (47 FR 22286), MSHA promulgated a rule that—

(1) Revised its regular assessment Penalty Conversion Table;

(2) Further defined the criteria for issuing special assessments; and

(3) Created a \$20 single penalty assessment for those violations that were not reasonably likely to result in reasonably serious injury or illness and which were abated in a timely manner.

Neither the 1978 nor the 1982 rule contained provisions addressing assessment of civil penalties for failing to abate violations of the Mine Act or for smoking or carrying smoking materials because the Mine Act had set these penalty amounts.

In 1990, the Omnibus Budget Reconciliation Act of 1990 (Budget Act), Pub. L. 101–508, amended the Mine Act. Section 3102 of the Budget Act raised the maximum MSHA civil penalty per violation from \$10,000 to \$50,000; and raised the civil penalty for failure to correct a violation under § 104(a) of the Mine Act from \$1,000 to \$5,000 per day. The miner smoking penalty remained at \$250. Also in 1990, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), Pub. L. 101–410, amending the Budget Act.

On January 24, 1992 (57 FR 2968), as amended December 21, 1992 (57 FR 60690), MSHA published a final rule which implemented the penalty increases prescribed by the Budget Act and accounted for inflation since 1982. The rule revised the regular assessment Penalty Conversion Table and raised the \$20 single penalty assessment to \$50.

In 1996, Congress passed the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub. L. 104–134. Chapter 10 of the OCRAA, titled the “Debt Collection Improvement Act of 1996” (DCIA), modified the Inflation Adjustment Act. The DCIA requires each agency to adjust for inflation each civil monetary penalty provided for by law within its jurisdiction at least once every four years. Agencies must make this cost-of-living adjustment using the inflation adjustment formula described under § 5 of the Inflation Adjustment Act. Although the first adjustment was not allowed to exceed 10% of the existing penalty, subsequent adjustments are not subject to this limitation.

On April 22, 1998 (63 FR 20032), MSHA published a final rule increasing civil penalties to comply with the DCIA. To account for inflation since 1992, this rule raised the maximum proposed civil penalty assessment from \$50,000 to \$55,000, raised the single penalty assessment from \$50 to \$55, and revised the Penalty Conversion Table. This rule also codified the penalties assessed under §§ 110(b) and 110(g) of the Mine Act into 30 CFR 100, raising the daily penalty for failing to abate violations from \$5,000 to \$5,500 and raising the penalty for smoking or carrying smoking materials from \$250 to \$275.

III. Discussion and Summary of the Direct Final Rule

A. General Discussion

In passing the Inflation Adjustment Act, Congress stated its concern that the punitive and deterrent effects of civil penalties erode over time when the penalties fail to keep pace with

inflation. This direct final rule makes a cost-of-living adjustment to MSHA's proposed civil penalty assessment amounts in compliance with the Inflation Adjustment Act. Under § 5 of the Inflation Adjustment Act, civil monetary penalties are to be increased by a “cost-of-living” adjustment. The statute defines “cost-of-living” adjustment as—

* * * The percentage * * * by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds;

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

The term *Consumer Price Index* (CPI) means “the Consumer Price Index for all-urban consumers published by the Department of Labor.”

In determining the current cost-of-living adjustment for its proposed civil penalty assessments, MSHA calculated the following:

538.9.0 (the CPI for June 2002, the calendar year preceding the current adjustment).

488.2 (the CPI for June 1998, the calendar year in which the MSHA civil penalties were last adjusted).

$10.4\% = (538.9 - 488.2) / 488.2 = \text{rounded inflation adjustment factor} = \text{percentage increase.}$

The Inflation Adjustment Act also included criteria for rounding the cost-of-living adjustment amount as follows:

Any increase * * * shall be rounded to the nearest—

(1) Multiple of \$10 in the case of penalties less than or equal to \$100;

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

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

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

The Inflation Adjustment Act only requires us to use the cost-of-living adjustment and rounding formula for penalties that were statutorily established by Congress. The Mine Act contains only three such penalties: the civil maximum penalty, the daily maximum penalty, and the miner smoking penalty. Consequently, this direct final rule adjusts our regulatory penalties, those not established by the Mine Act, by 10.4% truncated to the whole dollar.