

B. Section-by-Section Analysis

The following discussion explains the direct final rule's effect on existing civil penalty amounts.

Section 100.3 Determination of Penalty Amount; Regular Assessment

This section describes the criteria that MSHA will use to determine the proposed civil penalty assessment for violations of the Mine Act or regulations promulgated under the Mine Act.

Paragraph (a) of this section specifies the maximum per violation proposed civil penalty assessment. This direct final rule increases the maximum civil penalty by \$5,000 from \$55,000 to \$60,000, reflecting the 10.4% adjustment as calculated in accordance with the Inflation Adjustment Act. Because the Mine Act originally required this penalty, we have rounded the increase to \$5,000 in accordance with the Inflation Adjustment Act rounding requirements.

Paragraph (g) of this section includes a Penalty Conversion Table that correlates the total of the points assigned for each criterion enumerated in this section with a proposed civil penalty assessment. Current penalties range from \$66 to \$55,000. The increased civil penalties in the Penalty Conversion Table range from \$72 to \$60,000 to reflect a 10.4% adjustment factor. Because the Mine Act originally did not require these penalties, with the exception of the maximum civil penalty, we have truncated the adjusted penalty to the nearest whole dollar.

Section 100.4 Determination of Penalty; Single Penalty Assessment

This section pertains to violations that are not reasonably likely to result in reasonably serious injury or illness and which are abated in a timely manner. This direct final rule increases the single penalty assessment by \$5 from the existing \$55 to \$60 to reflect a 10.4% adjustment factor. Because the Mine Act originally did not require this penalty, we have truncated the adjusted penalty to the nearest whole dollar.

Section 100.5 Determination of Penalty; Special Assessment

This section pertains to violations, which are of such a nature or seriousness that we cannot determine an appropriate penalty using the regular assessment formula (§ 100.3) or the single penalty assessment (§ 100.4).

MSHA field personnel review certain categories of violations for special assessment. If the violation qualifies, experienced MSHA mine safety and health specialists determine the special assessment penalty based on the facts and circumstances of each case.

Paragraph (c) of this section addresses penalties which may be assessed daily to an operator for failure to correct a violation within the period permitted for its correction. This direct final rule increases the existing maximum daily civil penalty by \$1,000 from \$5,500 to \$6,500 to reflect the 10.4% adjustment factor computed under the Inflation Adjustment Act. Because the Mine Act originally required this penalty, we have rounded the increase to \$1,000 in accordance with the Inflation Adjustment Act rounding requirements.

Paragraph (d) of this section addresses penalties for miners who willfully violate mandatory safety standards relating to the use or carrying of smoking materials underground. This direct final rule keeps the miner's smoking penalty at \$275. Because the Mine Act originally required this penalty, we have rounded the increase to \$0 (the nearest \$100) in accordance with the Inflation Adjustment Act rounding requirements.

IV. Executive Order 12866, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with the revisions of Part 100—Criteria and Procedures for Proposed Assessment of Civil Penalties. We estimate that the direct final rule will result in increased costs to the mining industry of about \$2.5 million annually, which is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this direct final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the direct final rule. Accordingly, we are publishing a summary of the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as

part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home Page at www.msha.gov.

This direct final rule increases certain civil monetary penalties to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This statute specifies the procedure for calculating the adjusted civil monetary penalties and does not allow us to vary the calculation to minimize the effect on small entities. Moreover, the actual amount of the increase in penalties does not meet the threshold for a significant regulatory action, which is set forth in the RFA. We discuss our quantitative analysis supporting this conclusion below.

Factual basis for certification.

Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. The SBA definition for a small business in the mining industry is one with 500 or fewer employees. For the purpose of this certification, we have analyzed the costs and evaluated the impact of this direct final rule on mines using both MSHA's traditional definition and SBA's definition for a small mine.

We analyzed the impact of this direct final rule separately for the two major sectors of the mining industry: coal mining operations and metal/nonmetal mining operations. We compared the costs of the direct final rule in each sector to the revenues for each sector for each size category analyzed. In each case, the results indicated that the costs were much less than 1% of revenue.

In determining revenues for coal mines, we multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by the average price per ton for coal as determined in the *Coal Industry Annual 2000* (U.S. Department of Energy, Energy Information Administration). We obtained revenue data for metal and nonmetal mines from the *Mineral Commodities Summaries 2001* (U.S. Department of the Interior, Geological Survey).

The following table summarizes the results of our analysis.