

**FEDERAL REGISTER: 54 FR 19342 (May 4, 1989)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 845

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations which allow OSMRE to use money collected from payment of Federal civil penalties levied under section 518 of the Surface Mining Control and Reclamation Act of 1977 (Act) to reclaim lands that have been mined, abandoned or left inadequately reclaimed since passage of the Act. The regulations are being amended to comply with the Department of the Interior Appropriation Act for fiscal year 1989 to allow use of these funds until expended.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-7952 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Final Rule
- III. Procedural Matters

**I. BACKGROUND**

A detailed discussion of the regulation which implemented the use of civil penalty moneys and explains the Post Act Reclamation program may be found at *53 FR 16016*, May 4, 1988.

Congress, in the Department of the Interior Appropriations Act for fiscal year 1989 authorized the Secretary of the Interior to utilize money collected pursuant to the payment of civil penalties under section 518 of the Act to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended (Pub. L. 100-446). The appropriations language provides in part:

\* \* \* Provided, That notwithstanding any other provision of law, the Secretary of the Interior, pursuant to regulations, may utilize directly or through grants to States, moneys collected in fiscal year 1989 pursuant to the assessment of civil penalties under section 518 of the Surface Mining Control and Reclamation Act of 1977 (*30 U.S.C. 1268*), to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended. \* \* \*

**II. DISCUSSION OF FINAL RULE**

The reader is referred to a detailed discussion of 30 CFR 845.21 at *53 FR 16016*, May 14, 1988, for an explanation of the rule implementing Pub. L. 100-202, which allows use of civil penalty money for reclamation of post 1977 sites.

The present regulation amends 30 CFR 845.21(a) to implement the intent of Congress which authorizes the use of civil penalties collected in Fiscal 1989 until such funds are expended.

**III. PROCEDURAL MATTERS**

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under *44 U.S.C. 3507*.

#### Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local government. Furthermore, the rule produces no adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

#### National Environmental Policy Act

OSMRE prepared an environmental assessment (EA) for the May 4, 1988 regulation (53 FR 16016) that implemented the use of civil penalty moneys for post act reclamation. OSMRE determined at that time that there were no significant adverse impacts on the quality of the human environment that required preparation of an environmental impact statement within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A "Finding of No Significant Impact" (FONSI) was issued and included in the OSMRE administrative record at the address specified previously (see "ADDRESSES"). OSMRE has examined the rule being adopted here and determined that the analysis included in the EA prepared for the May 4, 1988, rule remains applicable. OSMRE has prepared a FONSI for the final rule reaffirming the finding that there will not be any significant adverse environmental impacts.

#### Administrative Procedure Act

This regulation is exempt from the public notice rulemaking requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). Notice and comment on the regulation are unnecessary since the regulation merely adopts without policy alternatives a technical change provided by Congress in the Agency's Appropriation Act for FY '89.

#### Author

The principal author of this rule is Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-7952 (Commercial or FTS).

#### **LIST OF SUBJECTS IN 30 CFR PART 845**

Administrative practice and procedure; Law enforcement; Penalties; Reporting and recordkeeping requirements; Surface mining; Underground mining.

Accordingly 30 CFR Part 845 is amended as follows:

Dated: March 5, 1989.

James E. Cason, Acting Assistant Secretary, Land and Minerals Management.

**PART 845 -- CIVIL PENALTIES**

1. The authority citation for Part 845 is revised to read:

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq., Pub. L. 100-34; Pub. L. 100-202, and Pub. L. 100-446.

2. In section 845-21, paragraph (a) is revised to read as follows:

**SECTION 845.21 - USE OF CIVIL PENALTIES FOR RECLAMATION.**

(a) To the extent authorized in the applicable annual appropriations act or other relevant statute, the Director of OSMRE may utilize money collected by the United States pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977, until such funds are expended.

\* \* \* \* \*

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