



FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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Report of SBREFA Compliance Under Executive Order 13,892

Section 10 of Executive Order 13,892 provides that each agency shall submit a report to the President within 180 days addressing compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121, enacted March 29, 1996) (“SBREFA”), as amended by the Fair Minimum Wage Act of 2007 (Pub. L. No. 110-28, enacted May 25, 2007) (“FMWA”), including section 223 of SBREFA. Executive Order 13,892 § 10. Section 223 requires that agencies have a penalty reduction policy in place for small businesses. Section 212(a) also requires agencies to produce small entity compliance guides for most of their rules. Finally, section 213(b) requires agencies regulating the activities of small entities to establish a program for responding to informal questions from small entities, utilizing existing functions and personnel of the agency to the extent practicable. The Executive Order requires agencies to post a copy of their SBREFA compliance reports, subject to redactions for any applicable privileges, on their websites. Executive Order 13,892 § 10.

The Federal Mine Safety and Health Review Commission (“Commission”) is an independent adjudicatory agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 (“Act”). The Commission is entirely independent and is not a component of the Department of Labor or Mine Safety and Health Administration, which promulgates regulations and brings enforcement actions under the Act.



The Commission is in full compliance with SBREFA. The Commission already evaluates when small entities should be subject to reduced civil penalties and mitigates the penalties based upon the violator's ability to pay. Section 110(i) of the Act states that the "Commission shall have authority to assess all civil penalties provided in this Act," and that in "assessing civil monetary penalties, the Commission shall consider [in part] . . . the appropriateness of such penalty to the size of the business of the operator charged, . . . [and] the effect on the operator's ability to continue in business." 30 U.S.C. § 820(i). The Commission has also explicitly incorporated by reference these factors into its procedural rules, *see* 29 C.F.R. § 2700.30(a), and routinely applies these factors when assessing penalties. *See, e.g., John Richards Constr.*, 39 FMSHRC 959, 965 & n.10 (May 2017); *Musser Eng'g, Inc.*, 32 FMSHRC 1257, 1289–90 & n.38 (Oct. 2010); *Broken Hill Mining Co.*, 19 FMSHRC 673, 676 & n.6 (Apr. 1997); *Georges Colliers, Inc.*, 23 FMSHRC 822, 824–25 n.3 (Aug. 2001).

The Commission is also in full compliance with section 212(a)'s requirement that agencies must produce small entity compliance guides for each rule for which an agency is required to prepare a final regulatory flexibility analysis. Under the exemption in 5 U.S.C. § 553(b)(3)(A), the Commission is not required to publish a notice of rulemaking when it promulgates procedural rules. Because the Commission is not required to publish notices of rulemaking, it is also not required to prepare regulatory flexibility analyses or, consequently, small entity compliance guides. Nonetheless, the Commission already produces such guides on its website. The guides explain to parties in detail how Commission proceedings work and how to bring a case before the Commission, among other matters. *See* <https://www.fmsihrc.gov/guides>. These guides are designed in large part to assist small mine operators, *pro se* parties, and other small entities in litigating their cases before the Commission. The Commission publishes these guides at a semi-regular interval, and is currently drafting some guidance to parties on how to make their electronic case filings text-searchable.

Finally, the Commission does not regulate the activities of small entities. Rather, the Commission has very limited rulemaking authority to promulgate procedural rules governing its own adjudicatory proceedings. Such rules are not substantive, and do not impose any substantial economic impact on small businesses. As such, the requirements of section 213(b) do not apply here.

Sincerely,

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Federal Mine Safety and Health Review Commission