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United States General Accounting Office
Washington, DC 20548

November 27, 2002

The Honorable Elaine L. Chao
The Secretary of Labor

Subject: *Mine Safety and Health Administration: Implementation of the
Inflation Adjustment Act*

Dear Madam Secretary:

Earlier this year, we initiated a governmentwide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act).¹ The Inflation Adjustment Act required each federal agency to issue a regulation adjusting its covered maximum and minimum civil monetary penalties for inflation by October 23, 1996, and requires them to make necessary adjustments at least once every 4 years thereafter. During our review, we determined that the Mine Safety and Health Administration (MSHA) within the Department of Labor published its first round of penalty adjustments in April 1998, but has not published a second round of adjustments for at least two eligible penalties. This report is intended to bring this matter to your attention and to recommend corrective action.

MSHA Has Not Published a Second Round of Adjustments for Eligible Penalties

Under the Inflation Adjustment Act, MSHA (like other covered federal agencies) was required to publish a regulation by October 23, 1996, adjusting its maximum civil penalties for inflation. The act requires those inflation adjustments to be based on changes in the Consumer Price Index (CPI) from June of the calendar year in which the penalties were last set or adjusted through June of the year prior to the adjustment. The statute also includes precise rules for rounding penalty increases. For example, the statute provides that penalty increases must be rounded to the nearest "multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000." The statute limited the first adjustments of an agency's penalties to 10 percent of the penalty amounts. It also requires agencies to examine their penalties at least once every 4 years and, if necessary, make additional inflation adjustments.

¹The Inflation Adjustment Act is codified at 28 U.S.C. 2461 note. The 1990 act was amended in 1996 by the Debt Collection Improvement Act, which added the requirement for agencies to adjust their civil penalties by regulation (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321-373).

On April 22, 1998, MSHA published a final rule making its first penalty adjustments under the Inflation Adjustment Act, with the penalty changes taking effect on June 22, 1998.² Therefore, MSHA should have examined its civil penalties and adjusted those penalties that were eligible under the statute by June 2002. For those penalties initially adjusted in 1998, MSHA should have used the percentage change in the CPI that occurred from June 1998 through June 2001 (about 9.2 percent) to determine whether another adjustment was warranted.

We believe that at least two of the agency's penalties should be adjusted as soon as possible: (1) a \$5,500 penalty that should be adjusted to \$6,500 and (2) a \$55,000 penalty that should be increased to \$60,000. MSHA officials told us during our review that the agency intends to adjust these penalties. However, as of the date of this letter, MSHA has not done so.

Recommendation for Executive Action

We recommend that the Secretary of Labor direct the Assistant Secretary of Labor for Mine Safety and Health to initiate a regulatory action as soon as possible to adjust eligible civil penalties in a manner consistent with the requirements of the Inflation Adjustment Act.

Agency Comments and Our Evaluation

On November 6, 2002, we provided a draft of this report to the Secretary of Labor for her review and comment. On November 26, 2002, the Assistant Secretary of Labor for Mine Safety and Health responded by letter agreeing that MSHA should have adjusted its civil penalties again by June 2002. He also said that MSHA was developing a direct final rule that would make those adjustments.

We are sending copies of this report to the Assistant Secretary of Labor for Mine Safety and Health and to appropriate congressional committees. It will also be available at no charge on GAO's Web site at <http://www.gao.gov>. If you or your staff have any questions on the matters discussed in this letter, you may contact Curtis Copeland or me at (202) 512-6806. John Tavares was a major contributor to this report.

Sincerely,



Victor S. Rezendes
Managing Director
Strategic Issues

(450170)

²See 63 Fed. Reg. 20032.