

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

RIN 1029-AC75

[Docket ID: OSM-2017-0012; S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A00 18XS501520]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), and Office of Management and Budget (OMB) guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: This rule is effective on March 12, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Kuhns, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4550, Washington, DC 20240; Telephone (202) 208-2860. Email: mkuhns@osmre.gov.

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I. Background

A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess civil monetary penalties (CMPs) for violations of SMCRA. The Office of Surface Mining Reclamation and Enforcement’s (OSMRE) regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. We are adjusting CMPs in four sections—30 CFR 723.14, 724.14, 845.14, and 846.14.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (2015 Act) became law. The 2015 Act, which further amended

the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified as amended at 28 U.S.C. 2461 note), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act required an initial “catch-up” adjustment. OSMRE published the initial adjustment in the **Federal Register** on July 8, 2016 (81 FR 44535), and the adjustment took effect on August 1, 2016. The 2015 Act also requires agencies to publish annual inflation adjustments in the **Federal Register** no later than January 15 of each year. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties. Further, the 2015 Act provides that agencies must adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” Therefore, the public procedure that the APA generally requires for rulemaking—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual CMP adjustments. See December 15, 2017, Memorandum for the Heads of Executive Departments and Agencies (M-18-03), from Mick Mulvaney, Director, Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum).

Pursuant to SMCRA and the 2015 Act, this final rule reflects the statutorily required CMP adjustments as follows:

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
30 CFR 723.14	1	\$64	\$65
	2	129	132
	3	193	197
	4	257	262
	5	321	328
	6	386	394
	7	450	459
	8	514	524
	9	578	590
	10	643	656
	11	707	721
	12	771	787
	13	835	852
	14	900	918
	15	965	985
	16	1,029	1,050
	17	1,093	1,115
	18	1,158	1,182
	19	1,222	1,247

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
	20	1,286	1,312
	21	1,350	1,378
	22	1,415	1,444
	23	1,479	1,509
	24	1,543	1,574
	25	1,607	1,640
	26	1,929	1,968
	27	2,250	2,296
	28	2,571	2,623
	29	2,770	2,827
	30	3,215	3,281
	31	3,536	3,608
	32	3,857	3,936
	33	4,179	4,264
	34	4,500	4,592
	35	4,822	4,920
	36	5,143	5,248
	37	5,465	5,577
	38	5,786	5,904
	39	6,107	6,232
	40	6,428	6,559
	41	6,751	6,889
	42	7,072	7,216
	43	7,393	7,544
	44	7,715	7,872
	45	8,036	8,200
	46	8,358	8,529
	47	8,679	8,856
	48	9,001	9,185
	49	9,322	9,512
	50	9,643	9,840
	51	9,964	10,167
	52	10,287	10,497
	53	10,608	10,825
	54	10,929	11,152
	55	11,251	11,481
	56	11,572	11,808
	57	11,893	12,136
	58	12,215	12,464
	59	12,537	12,793
	60	12,858	13,120
	61	13,179	13,448
	62	13,501	13,777
	63	13,823	14,105
	64	14,144	14,433
	65	14,465	14,760
	66	14,787	15,089
	67	15,108	15,416
	68	15,429	15,744
	69	15,751	16,072
	70	16,073	16,401
30 CFR 723.15(b) (Assessment of separate violations for each day)	2,411	2,460
30 CFR 724.14(b) (Individual civil penalties)	16,073	16,401
30 CFR 845.14	1	64	65
	2	129	132
	3	193	197
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	32	3,857	3,936
	33	4,179	4,264
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	38	5,786	5,904
	39	6,107	6,232
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	41	6,751	6,889
	42	7,072	7,216
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	67	15,108	15,416
	68	15,429	15,744
	69	15,751	16,072
	70	16,073	16,401
30 CFR 845.15(b) (Assessment of separate violations for each day)	2,411	2,460
30 CFR 846.14(b) (Individual civil penalties)	16,073	16,401

In the chart above, there are no numbers listed in the “Points” column relative to 30 CFR 723.15(b), 30 CFR 724.14(b), 30 CFR 845.15(b), and 30 CFR 846.14(b) because those regulatory provisions do not set forth numbers of points. For those provisions, the current regulations only set forth the dollar amounts shown in the chart in the “Current Penalty Dollar Amounts” column; the adjusted amounts, which we are adopting in this rule, are shown

in the “Adjusted Penalty Dollar Amounts” column.

B. Calculation of Adjustments

OMB issued guidance on the 2018 annual adjustments for inflation. See OMB Memorandum (December 15, 2017). The OMB Memorandum notes that the 1990 Act defines “civil monetary penalty” as “any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law; or . . . has a maximum

amount provided for by Federal law; and . . . is assessed or enforced by an agency pursuant to Federal law; and . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts” It further instructs that agencies “are to adjust ‘the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.’” See December 15, 2017

OMB Memorandum. The 1990 Act and the OMB Memorandum specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (the CPI-U) published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI-U for the preceding year. The recent OMB Memorandum specified that the cost-of-living adjustment multiplier for 2018, not seasonally adjusted, is 1.02041 (the October 2017 CPI-U (246.663) divided by the October 2016 CPI-U (241.729) = 1.02041). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act specifies that any resulting increases in CMPs must be rounded according to a stated rounding formula and that the increased CMPs apply only to violations that occur after the date the increase takes effect.

Generally, OSMRE assigns points to a violation as described in 30 CFR 723.13 and 845.13. The CMP owed is based on the number of points received, ranging from one point to seventy points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a \$16,073 CMP. To adjust this amount, we multiply \$16,073 by the 2018 inflation factor of 1.02041, resulting in a raw adjusted amount of \$16,401.05. Because the 2015 Act requires us to round any increase in the CMP amount to the nearest dollar, in this case a violation of 70 points would amount to a new CMP of \$16,401. Pursuant to the 2015 Act, the increases in this Final Rule apply to CMPs assessed after the date the increases take effect, even if the associated violation predates the applicable increase.

C. Effect of Rule in Federal Program States and on Indian Lands

OSMRE directly regulates surface coal mining and reclamation operations within a State or on tribal lands if the State or tribe does not obtain its own approved program pursuant to section 503 of SMCRA, 30 U.S.C. 1253. The increases in CMPs contained in this rule will apply to the following Federal program states: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Under 30 CFR 750.18, the increase in CMPs also applies to Indian lands under the Federal program for Indian lands.

D. Effect of the Rule on Approved State Programs

As a result of litigation, *see In re Permanent Surface Mining Regulation Litigation*, No. 79-1144, Mem. Op. (D.D.C. May 16, 1980), 19 Env't. Rep. Cas. (BNA) 1477, state regulatory programs are not required to mirror all of the penalty provisions of our regulations. Thus, this rule has no effect on CMPs in states with SMCRA primacy.

II. Procedural Matters and Required Determinations

A. Regulatory Planning and Review (Executive Orders 12866, 13563, and 13771)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. As mentioned above, OIRA has determined that agency regulations exclusively implementing the annual adjustment are not significant regulatory actions under E.O. 12866, provided they are consistent with the OMB Memorandum (*see* OMB Memorandum, M-18-03, at 3). Thus, E.O. 13771 does not apply to this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually for inflation “. . . notwithstanding Section 553 [of the Administrative Procedure Act].” Thus, no proposed rule will be published, and the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information *see* 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on Energy Supply, Distribution, and Use (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

N. Administrative Procedure Act

We are issuing this final rule without prior public notice or opportunity for public comment. As discussed above, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually. Under the 2015 Act, the public procedure that the Administrative Procedure Act generally requires—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual adjustments required by the 2015 Act. *See* OMB Memorandum, M-18-03, at 4.

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

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

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: February 21, 2018.

Joseph R. Balash,

Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, the Department of the Interior amends 30 CFR parts 723, 724, 845, and 846 as set forth below.

PART 723—CIVIL PENALTIES

- 1. The authority citation for part 723 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

- 2. In § 723.14, revise the table to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

	Points	Dollars
1		65
2		132
3		197
4		262
5		328
6		394
7		459
8		524
9		590
10		656
11		721
12		787
13		852
14		918
15		985
16		1,050
17		1,115
18		1,182
19		1,247
20		1,312
21		1,378
22		1,444
23		1,509
24		1,574
25		1,640
26		1,968
27		2,296
28		2,623
29		2,827
30		3,281
31		3,608

Points	Dollars
32	3,936
33	4,264
34	4,592
35	4,920
36	5,248
37	5,577
38	5,904
39	6,232
40	6,559
41	6,889
42	7,216
43	7,544
44	7,872
45	8,200
46	8,529
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48	9,185
49	9,512
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51	10,167
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54	11,152
55	11,481
56	11,808
57	12,136
58	12,464
59	12,793
60	13,120
61	13,448
62	13,777
63	14,105
64	14,433
65	14,760
66	15,089
67	15,416
68	15,744
69	16,072
70	16,401

■ 3. In § 723.15, revise paragraph (b) introductory text to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,460 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 4. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 5. In § 724.14, revise the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$16,401 for each violation. * * *

PART 845—CIVIL PENALTIES

■ 6. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. In § 845.14, revise the table to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	65
2	132
3	197
4	262
5	328
6	394
7	459
8	524
9	590
10	656
11	721
12	787
13	852
14	918
15	985
16	1,050
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50	9,840
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54	11,152
55	11,481
56	11,808
57	12,136
58	12,464
59	12,793
60	13,120
61	13,448
62	13,777
63	14,105
64	14,433
65	14,760
66	15,089
67	15,416
68	15,744
69	16,072
70	16,401

■ 8. In § 845.15, revise paragraph (b) introductory text to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,460 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

■ 9. The authority citation for part 846 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 10. In § 846.14, revise the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$16,401 for each violation. * * *

[FR Doc. 2018–04909 Filed 3–9–18; 8:45 am]

BILLING CODE 4310–05–P