

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

[Docket ID: OSM–2016–0015; S1D1S SS08011000 SX064A000 178S180110; S2D2S SS08011000 SX064A00 17XS501520]

RIN 1029–AC74

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 (the 2015 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 February 6, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Kuhns, Office of Surface Mining Reclamation and Enforcement, South Interior Building MS–203, 1951 Constitution Avenue NW., 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 (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 President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (“the 2015 Act”) into law. The 2015 Act requires that Federal agencies promulgate rules to adjust the level of civil monetary penalties (“CMPs”) to account for inflation. In addition to an initial “catch-up” adjustment through an interim final rulemaking that was published in the **Federal Register** on July 8, 2016 (81 FR 44535), which took effect on August 1, 2016, the 2015 Act also requires agencies to make subsequent annual adjustments for inflation. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes which authorize them. Agencies are required to publish annual inflation adjustments in the **Federal Register** no later than January 15 of each year, starting with the second adjustments in 2017, and no later than January 15 each subsequent year. In accordance with the 2015 Act, for the second adjustments, and each annual adjustment thereafter, agencies must adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). The public procedure the APA 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 adjustment.

Pursuant to SMCRA and the 2015 Act, this rule adjusts the following civil penalties:

CFR citation	Points	Current penalty (\$)	Adjusted penalty (\$)
30 CFR 723.14	1	\$63	\$64
	2	127	129
	3	190	193
	4	253	257
	5	316	321
	6	380	386
	7	443	450
	8	506	514
	9	569	578
	10	633	643
	11	696	707
	12	759	771
	13	822	835
	14	886	900
	15	949	965
	16	1,012	1,029
	17	1,075	1,093
	18	1,139	1,158
	19	1,202	1,222
	20	1,265	1,286
	21	1,328	1,350
	22	1,392	1,415
	23	1,455	1,479
	24	1,518	1,543
	25	1,581	1,607
	26	1,898	1,929

CFR citation	Points	Current penalty (\$)	Adjusted penalty (\$)
	27	2,214	2,250
	28	2,530	2,571
	29	2,725	2,770
	30	3,163	3,215
	31	3,479	3,536
	32	3,795	3,857
	33	4,112	4,179
	34	4,428	4,500
	35	4,744	4,822
	36	5,060	5,143
	37	5,377	5,465
	38	5,693	5,786
	39	6,009	6,107
	40	6,325	6,428
	41	6,642	6,751
	42	6,958	7,072
	43	7,274	7,393
	44	7,591	7,715
	45	7,907	8,036
	46	8,223	8,358
	47	8,539	8,679
	48	8,856	9,001
	49	9,172	9,322
	50	9,488	9,643
	51	9,804	9,964
	52	10,121	10,287
	53	10,437	10,608
	54	10,753	10,929
	55	11,070	11,251
	56	11,386	11,572
	57	11,702	11,893
	58	12,018	12,215
	59	12,335	12,537
	60	12,651	12,858
	61	12,967	13,179
	62	13,284	13,501
	63	13,600	13,823
	64	13,916	14,144
	65	14,232	14,465
	66	14,549	14,787
	67	14,865	15,108
	68	15,181	15,429
	69	15,497	15,751
	70	15,814	16,073
30 CFR 723.15(b) (Assessment of separate violations for each day)	Maximum	2,372	2,411
30 CFR 724.14(b) (Individual)	Maximum	17,395	16,073
30 CFR 845.14	1	63	64
	2	127	129
	3	190	193
	4	253	257
	5	316	321
	6	380	386
	7	443	450
	8	506	514
	9	569	578
	10	633	643
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	66	14,549	14,787
	67	14,865	15,108
	68	15,181	15,429
	69	15,497	15,751
	70	15,814	16,073
30 CFR 845.15(b) (Assessment of separate violations for each day)	Maximum	2,372	2,411
30 CFR 846.14(b) (Individual)	Maximum	17,395	16,073

OSMRE miscalculated the existing \$17,395 maximum individual civil penalty rates at § 724.14(b) and § 846.14(b) that it published in the **Federal Register** on July 8, 2016 (81 FR 44535), and which thereafter became effective on August 1, 2016. The value should have been \$15,814, which is the same as the existing maximum civil penalties for permittees. Instances of assessing individual civil penalties are infrequent. Applying the 2017 cost-of-living multiplier of 1.01636 to the corrected value results in a new maximum individual civil penalty rate of \$16,073 (\$15,814 × 1.01636). The 2017 multiplier is based on the percent change between the Consumer Price Index for all Urban Consumers at two points in time, as explained more fully below in *Calculation of Adjustments*.

B. Calculation of Adjustments

The Office of Management and Budget (OMB) issued guidance on making the 2017 annual adjustments for inflation. See December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*.

The OMB guidance notes that the 2015 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 16, 2016 OMB memorandum. The 2015 Act and OMB guidance specify the amount of the annual inflation adjustments. The 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 year preceding that. The recent OMB guidance specified that the cost-of-living

adjustment multiplier for 2017, not seasonally adjusted, is 1.01636 (the October 2016 CPI-U (241.729) divided by the October 2015 CPI-U (237.838) = 1.01636). OSMRE used this guidance to identify applicable civil monetary penalties and calculate the required inflation adjustments. The 2015 Act specifies that any resulting increases in a CMP 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 \$15,814 CMP. To adjust this amount, we multiply \$15,814 by the 2017 inflation factor of 1.01636, resulting in a raw adjusted amount of \$16,072.72. 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 \$16,073. Pursuant to the 2015 Act, the increases in this rule apply to civil penalties 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. The increases in civil monetary penalties 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. The increase in civil monetary penalties also applies to Indian lands under the Federal program for Indian lands, which appears in 30 CFR 750.18.

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 (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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.

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) Does 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) Does 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 and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes 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. Beginning in 2017, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually, no later than January 15 of each year. Under the 2015 Act, the public procedure 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.

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: January 27, 2017.

Richard T. Cardinale,
Acting 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. Section 723.14 is amended by revising the table to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

	Points	Dollars
1	64
2	129
3	193
4	257
5	321
6	386
7	450
8	514
9	578
10	643
11	707
12	771
13	835
14	900
15	965
16	1,029
17	1,093
18	1,158
19	1,222
20	1,286
21	1,350
22	1,415
23	1,479
24	1,543
25	1,607
26	1,929
27	2,250
28	2,571
29	2,770
30	3,215
31	3,536
32	3,857
33	4,179
34	4,500
35	4,822
36	5,143
37	5,465
38	5,786
39	6,107
40	6,428
41	6,751
42	7,072
43	7,393
44	7,715
45	8,036
46	8,358
47	8,679
48	9,001
49	9,322
50	9,643
51	9,964
52	10,287
53	10,608
54	10,929
55	11,251
56	11,572
57	11,893
58	12,215
59	12,537
60	12,858
61	13,179
62	13,501
63	13,823
64	14,144
65	14,465
66	14,787
67	15,108
68	15,429
69	15,751
70	16,073

■ 3. Section 723.15 is amended by revising 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 \$2,411 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. Section 724.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$16,073 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. Section 845.14 is amended by revising the table to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Table with 2 columns: Points, Dollars. Rows 1-19 with corresponding values.

Table with 2 columns: Points, Dollars. Rows 20-70 with corresponding values.

■ 8. Section 845.15 is amended by revising 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 \$2,411 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. Section 846.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$16,073 for each violation. * * *

[FR Doc. 2017–02417 Filed 2–3–17; 8:45 am]

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Copyright Office

37 CFR Parts 201, 202, 203, 204, 205, 210, 211, 212, 253, 254, 255, 256, 258, 260, 261, 262, 263, and 270

[Docket No. 2016–5]

Copyright Office Technical Amendments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations governing registration, recordation, licensing, and other services that the Office provides. The amendments will improve the quality of the Office’s regulations by updating cross-references to the Copyright Act and the Office’s regulations, replacing outdated terminology, reflecting structural changes to the Office and its senior management, eliminating expired or obsolete provisions, and correcting nonsubstantive errors.

DATES: Effective March 8, 2017.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, sdam@loc.gov; Regan A. Smith, Deputy General Counsel, resm@loc.gov; or Erik Bertin, Deputy Director of Registration Policy and Practice, ebertain@loc.gov. Each person can be reached by telephone at 202–707–8040.

SUPPLEMENTARY INFORMATION:

I. Background

On October 3, 2016, the U.S. Copyright Office (“Office”) published a Notice of Proposed Rulemaking (“NPRM”) setting forth proposed regulatory amendments designed to improve the quality of the Office’s