



[4337-15-P]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

[167A2100DD/AAKC001030/A0A501010.999900 253G]

25 CFR Parts 140, 141, 211, 213, 225, 226, 227, 243, 249

RIN 1076-AF32

**Civil Penalties Inflation Adjustments**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Interim final rule.

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**SUMMARY:** This rule adjusts the level of civil monetary penalties contained in Indian Affairs regulations with an initial “catch-up” adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments will be accepted until [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Search for Docket No. BIA-2016-0004 and follow the instructions for submitting comments.

- *Mail, Hand Delivery, or Courier:* Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action – Indian Affairs, U.S. Dept. of the Interior, 1849 C Street, NW., Mail Stop 3642, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary – Indian Affairs; telephone (202) 273-4680, elizabeth.appel@bia.gov.

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**I. Background**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial catch-up adjustment through rulemaking and then make subsequent annual adjustments for inflation. This rule adjusts the level of civil monetary penalties within those parts of Title 25 of the Code of Federal Regulations that fall under Chapter I, the Bureau of Indian Affairs. This rule does not

affect criminal penalties, such as those at 25 CFR 273.15. This rule does not affect Chapter V, Bureau of Indian Affairs, and Indian Health Service or Chapter VI, Office of the Assistant Secretary, Indian Affairs, because those chapters contain no civil monetary penalties. This rule does not affect Chapter III, National Indian Gaming Commission, or Chapter IV, Office of Navajo and Hopi Indian Relocation, because those respective offices will determine whether it is necessary to issue separate rulemakings.

The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. This rule adjusts the following civil monetary penalties, as calculated in accordance with the procedures described in Section II, Calculation of Adjustment:

CFR Citation	Description of Penalty	Current Penalty	Catchup Adjustment Multiplier	Adjusted Penalty
25 CFR 140.3	Penalty for trading in Indian country without a license	\$500	2.50000	\$1,250
25 CFR 141.50	Penalty for trading on Navajo, Hopi or Zuni reservations without a license	\$500	2.50000	\$1,250
25 CFR 211.55	Penalty for violation of leases of Tribal land for mineral development, violation of part 211, or failure to comply with a notice of noncompliance or cessation order	\$1,000	1.50245	\$1,502
25 CFR 213.37	Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders	\$500	2.50000	\$1,250
25 CFR 225.37	Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order	\$1,000	1.59089	\$1,591
25 CFR 226.42	Penalty for violation of lease of Osage reservation lands for oil and	\$500	1.78156	\$891

	gas mining or regulations at part 226, or noncompliance with the Superintendent's order			
25 CFR 226.43(a)	Penalty per day for failure to obtain permission to start operations	\$50	1.78156	\$89
25 CFR 226.43(b)	Penalty per day for failure to file records	\$50	1.78156	\$89
25 CFR 226.43(c)	Penalty for each well and tank battery for failure to mark wells and tank batteries	\$50	1.78156	\$89
25 CFR 226.43(d)	Penalty each day after operations are commenced for failure to construct and maintain pits	\$50	1.78156	\$89
25 CFR 226.43(e)	Penalty for failure to comply with requirements regarding valve or other approved controlling device	\$100	1.78156	\$178
25 CFR 226.43(f)	Penalty for failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well	\$200	1.78156	\$356
25 CFR 226.43(g)	Penalty per day for failure to properly care for and dispose of deleterious fluids	\$500	1.78156	\$891
25 CFR 226.43(h)	Penalty per day for failure to file plugging and other required reports	\$50	1.78156	\$89
25 CFR 227.24	Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders	\$500	2.50000	\$1,250
25 CFR 243.8	Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms.	\$5,000	1.17858	\$5,893
25 CFR 249.6(b)	Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing).	\$500	2.50000	\$1,250

## II. Calculation of Adjustment

The OMB issued guidance on calculating the catch-up adjustment. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun

Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. Under this guidance the Department of the Interior (Department) has identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI0-U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI-U.

### **III. Procedural Requirements**

#### **A. Regulatory Planning and Review (E.O. 12866 and 13563)**

Executive Order (E.O.) 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.

### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for 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 Adjustment Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. Thus, the RFA does not apply to this final rule.

### **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 affect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

**F. Federalism (E.O. 13132)**

Under the criteria in section 1 of E.O. 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 E.O. 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 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 E.O. 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 OMB 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 the Energy Supply (E.O. 13211)**

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

### **L. Clarity of this Regulation**

We are required by E.O. 12866 (section 1(b)(12)), and 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 feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. 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 think lists or tables would be useful, etc.

#### **M. Administrative Procedure Act**

The Act requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties no later than August 1, 2016. To comply with the Act, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure...are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an opportunity for prior public comment. The Bureau of Indian Affairs (BIA) finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, BIA is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish an interim final rule and to update the civil penalty amounts by applying the specified formula. BIA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to

provide an opportunity for pre-promulgation public comment on this rule. Thus, pre-promulgation notice and public comment is impracticable and unnecessary.

**List of Subjects**

25 CFR Part 140

Business and industry, Indians, Penalties.

25 CFR Part 141

Business and industry, Credit, Indians-business and finance, Penalties.

25 CFR Part 211

Geothermal energy, Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 213

Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Geothermal energy, Indians-lands, Mineral resources, Mines, Oil and gas exploration, Penalties, Reporting and recordkeeping requirements, Surety bonds.

25 CFR Part 226

Indians-lands.

25 CFR Part 227

Indians-lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 243

Indians, Livestock.

25 CFR Part 249

Fishing, Indians.

For the reasons given in the preamble, the Department of the Interior amends Chapter I of title 25 Code of Federal Regulations as follows.

**PART 140 – LICENSED INDIAN TRADERS**

1. The authority citation for part 140 is revised to read as follows:

**Authority:** Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

**§ 140.3 [Amended]**

2. In § 140.3, remove “\$500” and add in its place “\$1,250”.

**PART 141 – BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS**

3. The authority citation for part 141 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

**§ 141.50 [Amended]**

4. In § 141.50, remove “five hundred dollars (\$500)” and add in its place “\$1,250”.

**PART 211 – LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT**

5. The authority citation for part 211 is revised to read as follows:

**Authority:** Sec. 4, Act of May 11, 1938 (52 Stat. 347); Act of August 1, 1956 (70 Stat. 744); 25 U.S.C. 396a-g; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

**§ 211.55 [Amended]**

6. In § 211.55(a), remove “\$1,000” and add in its place “\$1,502”.

**PART 213 – LEASING OF RESTRICTED LANDS FOR MEMBERS OF FIVE  
CIVILIZED TRIBES, OKLAHOMA, FOR MINING**

7. The authority citation for part 213 is revised to read as follows:

**Authority:** Sec. 2, 35 Stat. 312; sec. 18, 41 Stat. 426; sec. 1, 45 Stat. 495; sec. 1, 47 Stat. 777; 25 U.S.C. 356; and Sec. 701, Pub. L. 114-74, 129 Stat. 599. Interpret or apply secs. 3, 11, 35 Stat. 313, 316; sec. 8, 47 Stat. 779, unless otherwise noted.

**§ 213.37 [Amended]**

8. In § 213.37, remove “\$500” and add in its place “\$1,250”.

**PART 225 – OIL AND GAS, GEOTHERMAL AND SOLID MINERALS AGREEMENTS**

9. The authority citation for part 225 is revised to read as follows:

**Authority:** 25 U.S.C. 2, 9, and 2101-2108; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

**§ 225.37 [Amended]**

10. In § 225.37(a), remove “\$1,000” and add in its place “\$1,591”.

**PART 226 – LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS  
MINING**

9. The authority citation for part 226 is revised to read as follows:

**Authority:** Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

**§ 226.42 [Amended]**

10. In § 226.42, remove “\$500” and add in its place “\$891”.

**§ 226.43 [Amended]**

11. In § 226.43:

a. Remove “\$50” each time it appears and add in each place “\$89” wherever it appears in this section.

b. In paragraph (e), remove “\$100” and add in its place “\$178”.

c. In paragraph (f), remove “\$200” and add in its place “\$356”.

d. In paragraph (g), remove “\$500” and add in its place “\$891”.

**PART 227 – LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING**

12. The authority citation for part 227 is revised to read as follows:

**Authority:** Sec. 1, 39 Stat. 519; and Sec. 701, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

**§ 227.24 [Amended]**

13. In § 227.24, remove “\$500” and add in its place “\$1,250”.

**PART 243 – REINDEER IN ALASKA**

14. The authority citation for part 243 is revised to read as follows:

**Authority:** Sec. 12, 50 Stat. 902; 25 U.S.C. 500K; and Sec. 701, Pub. L. 114-74, 129 Stat. 599.

**§ 243.8 [Amended]**

15. In § 243.8(a), remove “\$5000.00” and add in its place “\$5,893”.

**PART 249 – OFF-RESERVATION TREATY FISHING**

16. The authority citation for part 249 is revised to read as follows:

**Authority:** 25 U.S.C. 2, and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114-74, 129 Stat.

599, unless otherwise noted.

**§ 249.6 [Amended]**

17. In § 249.6(b), remove “\$500” and add in its place “\$1,250”.

Dated: June 24, 2016

Lawrence S. Roberts,

*Acting Assistant Secretary – Indian Affairs.*

[FR Doc. 2016-15534 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]