



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

RIN 1029-AC86

[Docket ID: OSM 2024-0001; S1D1S SS08011000 SX064A000 245S180110;
S2D2SSS08011000 SX064A00 24XS501520]

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 guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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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 Federal regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is adjusting CMPs in six sections: 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14.

On November 2, 2015, the President signed the 2015 Act into law (Sec. 701 of Pub. L. No 114-74). The 2015 Act, which amended the 1990 Act (Pub. L. No. 101-410), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act requires agencies to publish annual inflation adjustments. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties.

B. Calculation of Adjustments

The Office of Management and Budget (OMB) issued guidance on the 2024 annual adjustments for inflation. December 19, 2023, Memorandum for the Heads of Executive Departments and Agencies (M-24-07), *Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum). 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” *Id.* at 2. 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.’” *Id.* The 1990 Act, as amended by the 2015 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 2024, not seasonally adjusted, is 1.03241 (the October 2023 CPI-U (307.671) divided by the

October 2022 CPI-U (298.012) = 1.03241). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act, as amended by the 2015 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 CMP assessments that occur after the date that the increases take 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 70 points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a \$19,815 CMP. To adjust this amount, OSMRE multiplied \$19,815 by the 2023 inflation factor of 1.03241, resulting in a raw adjusted amount of \$20,457.20. Because the 2015 Act requires rounding 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 \$20,457. 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.

There are no points associated with 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, only dollar amounts.

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

OSMRE directly regulates surface coal mining and reclamation operations within a State or on Indian lands if the State or Tribe does not obtain its own approved program pursuant to sections 503 or 710(j) of SMCRA, 30 U.S.C. 1253 or 1300(j). 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 increases in CMPs also apply to Indian lands under the Federal program for Indian lands.

D. Effect of the Rule on Approved State Programs

As a result of litigation, State regulatory programs are not required to mirror all of the penalty provisions of our regulations. *See In re Permanent Surface Mining Regul. Litig.*, No. 79-1144, 1980 U.S. Dist. LEXIS 17722, at *21-23 (D.D.C. Feb. 26, 1980); 1980 U.S. Dist. LEXIS 17660, at *87-88 (D.D.C. May 16, 1980). Thus, this rule has no effect on CMPs in States with SMCRA primacy.

II. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) within OMB will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments and that are consistent with the OMB Memorandum, such as this rule, are not significant.

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. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review 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 United States-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 (Executive Order 12630)

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

F. Federalism (Executive Order 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 (Executive Order 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 (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. OSMRE has evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512, Chapters 4, 5, 6, and 7 and under the criteria in E.O. 13175 and has determined that it has no substantial direct effects on Federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's Tribal and ANCSA consultation policies is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. OSMRE 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 under the National Environmental Policy Act of 1969 (NEPA) because of the non-discretionary nature of the civil penalty adjustment as required by law (*see* 40 CFR 1508.1(q)(1)(ii)). The 2015 Act requires OSMRE to annually adjust the amounts of its civil penalties to account for inflation as measured by the Department of Labor's Consumer Price Index. Accordingly, OSMRE has no discretion in the execution of the civil penalty adjustments reflected in this final rule. Because this rule is not a major Federal action, it is therefore not subject to

the requirements of NEPA. Even if this were a discretionary action subject to NEPA, which it is not, a detailed statement under NEPA would nevertheless not be required because, as a regulation of an administrative nature, this rule would otherwise be covered by a categorical exclusion (*see* 43 CFR 46.210(i)). OSMRE has determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would prevent reliance on the categorical exclusion. Therefore, a detailed statement under NEPA is not required.

K. Effects on Energy Supply, Distribution, and Use (Executive Order 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. Administrative Procedure Act

OSMRE is issuing this final rule without prior public notice or opportunity for public comment. The 2015 Act 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-24-07, at 3-4.

M. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs Federal agencies to use voluntary consensus standards when implementing regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This final rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA, and the requirements would not be applicable to this final rulemaking.

N. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

E.O. 13045 requires that environmental and related rules separately evaluate the potential impact to children. However, E.O. 13045 is inapplicable to this rulemaking because this is not a substantive rulemaking, and a notice of proposed rulemaking was neither required nor prepared. *See* sections 2-202 and 5-501 of E.O. 13045.

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.

Delegation of Signing Authority

The action taken herein is pursuant to an existing delegation of authority.

Steven H. Feldgus,
Principal Deputy 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. Amend § 723.14 by revising table 1 to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Table 1 to § 723.14

Points	Dollars
1.....	82
2.....	164
3.....	246
4.....	327
5.....	410
6.....	491
7.....	573
8.....	651
9.....	736
10.....	819
11.....	899
12.....	982
13.....	1,061
14.....	1,145
15.....	1,230
16.....	1,309
17.....	1,391
18.....	1,475
19.....	1,555
20.....	1,636
21.....	1,720
22.....	1,801
23.....	1,882
24.....	1,963
25.....	2,045
26.....	2,455
27.....	2,864
28.....	3,271
29.....	3,527
30.....	4,091
31.....	4,499
32.....	4,910
33.....	5,319
34.....	5,729
35.....	6,137

36.....	6,547
37.....	6,956
38.....	7,365
39.....	7,773
40.....	8,182
41.....	8,594
42.....	9,002
43.....	9,408
44.....	9,819
45.....	10,228
46.....	10,638
47.....	11,046
48.....	11,457
49.....	11,864
50.....	12,273
51.....	12,681
52.....	13,093
53.....	13,502
54.....	13,912
55.....	14,322
56.....	14,730
57.....	15,137
58.....	15,546
59.....	15,957
60.....	16,365
61.....	16,774
62.....	17,183
63.....	17,593
64.....	18,002
65.....	18,410
66.....	18,821
67.....	19,230
68.....	19,637
69.....	20,047
70.....	20,457

3. Amend § 723.15 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 \$3,068 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 \$20,457 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. Amend § 845.14 by revising table 1 to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Table 1 to § 854.14

Points	Dollars
1.....	82
2.....	164
3.....	246
4.....	327
5.....	410
6.....	491
7.....	573
8.....	651
9.....	736
10.....	819
11.....	899
12.....	982
13.....	1,061
14.....	1,145
15.....	1,230
16.....	1,309
17.....	1,391

18.....	1,475
19.....	1,555
20.....	1,636
21.....	1,720
22.....	1,801
23.....	1,882
24.....	1,963
25.....	2,045
26.....	2,455
27.....	2,864
28.....	3,271
29.....	3,527
30.....	4,091
31.....	4,499
32.....	4,910
33.....	5,319
34.....	5,729
35.....	6,137
36.....	6,547
37.....	6,956
38.....	7,365
39.....	7,773
40.....	8,182
41.....	8,594
42.....	9,002
43.....	9,408
44.....	9,819
45.....	10,228
46.....	10,638
47.....	11,046
48.....	11,457
49.....	11,864
50.....	12,273
51.....	12,681
52.....	13,093
53.....	13,502
54.....	13,912
55.....	14,322
56.....	14,730
57.....	15,137
58.....	15,546
59.....	15,957
60.....	16,365
61.....	16,774
62.....	17,183
63.....	17,593
64.....	18,002
65.....	18,410
66.....	18,821
67.....	19,230
68.....	19,637
69.....	20,047

70.....20,457

8. Amend § 845.15 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 \$3,068 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 \$20,457 for each violation. * * *