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Employment and Training Administration

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Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments; Final Rule

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 655****Office of Workers' Compensation Programs****20 CFR Parts 702, 725, 726****Office of the Secretary****29 CFR Part 5****41 CFR Part 50–201****Wage and Hour Division****29 CFR Parts 500, 501, 530, 570, 578, 579, 801, 825****Occupational Safety and Health Administration****29 CFR Parts 1902, 1903****Employee Benefits Security Administration****29 CFR Part 2560, 2575, 2590****Mine Safety and Health Administration****30 CFR Part 100****RIN 1290–AA31****Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments**

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The U.S. Department of Labor is issuing this interim final rule to adjust the amounts of civil penalties assessed or enforced in its regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment, followed by annual adjustments for inflation. The Department is required to calculate the catch-up and subsequent annual

adjustments based on the Consumer Price Index for all Urban Consumers. The Department must publish the interim final rule by July 1, 2016, and the new penalty levels are effective no later than August 1, 2016.

DATES: This interim final rule is effective August 1, 2016. See **SUPPLEMENTARY INFORMATION** for applicability dates. Interested persons are invited to submit written comments on this interim final rule on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1290–AA31, by either of the following methods:

Electronic Comments: Comments may be sent via <http://www.regulations.gov>, a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type in "Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Mail: Address written submissions to Tiffany Jones, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will become a matter of public record and will be posted without change to <http://www.regulations.gov>, including any personal information provided. Comments that are mailed must be received by the date indicated for consideration.

Docket: For access to the docket to read background documents or comments, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Pamela Peters, Program Analyst, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5959 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

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I. Regulatory Information

The U.S. Department of Labor (Department) is publishing this interim final rule (IFR) to adjust its civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). This law requires the Department to publish an initial "catch-up adjustment" through an interim final rule.

Pursuant to the Inflation Adjustment Act and 5 U.S.C. 553(b)(3)(B), the Department finds that good cause exists for issuing this IFR without prior notice and comment. By operation of the Inflation Adjustment Act, the Department must publish the catch-up adjustment by July 1, 2016, and the rule must be effective no later than August 1, 2016. The Inflation Adjustment Act further provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Additionally, the Inflation Adjustment Act provides a clear

formula for adjustment of the civil penalties, leaving little room for discretion. For these reasons, the Department finds that notice and comment would be impracticable and unnecessary in this situation and contrary to the language of the Inflation Adjustment Act.

II. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the “Prior Inflation Adjustment Act”), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustments for inflation.

The Inflation Adjustment Act amends the Prior Inflation Adjustment Act in two key respects. First, the Inflation Adjustment Act rescinds an exemption that previously disallowed inflationary adjustments for violations of the Occupational Safety and Health Act (OSH Act). As a result, the Department is updating the penalties under the OSH Act for the first time since 1990.

Second, the Inflation Adjustment Act substantially revises the method of calculating inflation adjustments. The Prior Inflation Adjustment Act required adjustments to civil penalties to be rounded significantly. For example, a penalty increase that was greater than \$1,000, but less than or equal to \$10,000, would be rounded to the nearest multiple of \$1,000. As a result, penalties were increased infrequently, and when they were finally increased, the amounts of the increases were sometimes substantial. Over time, this formula caused most of the Department’s penalties to lose value relative to total inflation for long periods of time, thereby undermining the Prior Inflation Adjustment Act’s purposes of maintaining the deterrent effect of civil money penalties and promoting compliance with the law.

The Inflation Adjustment Act has removed these rounding rules; now, penalties are simply rounded to the nearest dollar. This rounding ensures that penalties will be increased each year to more effectively keep up with

inflation, and ensures that penalties are more evenly established.

Furthermore, the Inflation Adjustment Act provides for an initial “catch-up” adjustment that generally excludes prior inflationary adjustments under the Prior Inflation Adjustment Act. For this catch-up adjustment, the Inflation Adjustment Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the penalty amount, the maximum penalty level, or range of minimum and maximum penalties was established (*i.e.*, originally enacted by Congress or by regulation) or last adjusted other than pursuant to the Prior Inflation Adjustment Act. That amount becomes the basis of any such catch-up adjustment, subject to a cap on any penalty increase of 150 percent of the current penalty amount as of November 2015—allowing for a total new penalty of no more than 250 percent of the November 2015 penalty amount. The Inflation Adjustment Act also mandates that the catch-up adjustment apply to any civil monetary penalty assessed after August 1, 2016, “including those whose associated violation predated such increase.” Pub. L. 114–74 at § 701. The adjusted civil penalty amounts are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the Inflation Adjustment Act. Therefore, violations occurring on or before November 2, 2015, as well as assessments made prior to August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts currently set forth in the Department’s prior regulations at 20 CFR parts 655, 702, 725, and 726; 29 CFR parts 5, 500, 501, 530, 570, 578, 579, 801, 825, 1902, 1903, 2560, 2575, and 2590; 30 CFR part 100; and 41 CFR part 50–201 (or as set forth by statute if the amount has not yet been adjusted by regulation).

The Department has undertaken a thorough review of civil penalties administered by its various components pursuant to the Inflation Adjustment Act and in accordance with guidance issued by the Office of Management and Budget.¹ The Department first identified for each penalty the year and corresponding amount or amounts for which the maximum penalty level or range of minimum and maximum penalties was established or last adjusted, other than pursuant to the

Prior Inflation Adjustment Act. Then the Department determined the applicable inflation adjustments based upon the percent change between the October Consumer Price Index for all Urban Consumers (CPI-U) for the preceding year versus the year of enactment or last adjustment.² The Department compared the amount of the penalty adjustment against the 150 percent cap and added the lower of the two to the existing penalty to compute the new penalty. This IFR establishes the initial catch-up adjustment for civil penalties as described.³

III. Section-by-Section Analysis

The following section-by-section discussion of this IFR presents the contents of each section in more detail. The Department invites comments on any issues addressed in this IFR.

A. Employment and Training Administration (20 CFR Part 655)

1. General

This section A of the preamble addresses civil monetary penalties authorized by the Immigration and Nationality Act’s (INA) D–1 and H–1B visa programs and that are reflected in the Employment and Training Administration’s regulations, but are enforced by the Department’s Wage and Hour Division (WHD). Paragraph 2(a) involves violations of the D–1 visa program, and paragraph 2(b) involves violations of the H–1B visa program.

2. Specific Penalty Increases

a. Section 655.620—Civil Money Penalties and Other Remedies

Section 258(c)(4)(E)(i) of the INA, 8 U.S.C. 1288(c)(4)(E)(i), and existing 20 CFR 655.620(a), provide for the imposition of civil money penalties where the Secretary of Labor (Secretary) finds, after notice and an opportunity for hearing, that there has been a violation of, or misrepresentation in, the attestations by employers using alien crewmembers for longshore activities in U.S. ports, pursuant to the D–1 visa program, or of the Secretary’s regulations regarding the D–1 program. These authorities provide that such civil money penalties are not to exceed \$5,000 for each alien crewmember with respect to whom there has been a violation. The maximum penalty amount last established by statute or regulation, other than the Prior Inflation Adjustment Act, was set in 1990 and is the same as the existing maximum

¹ OMB Mem. M–16–06 (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

² OMB has provided the relevant year-over-year multipliers, rounded to 5 decimal points. *Id.* at 6.

³ Appendix 1 consists of a table that provides ready access to key information about each penalty.

penalty amount. *See* Immigration Act of 1990, Pub. L. 101–649, 203(a)(1) (Nov. 29, 1990).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1990 of 1.78156, which resulted in a maximum penalty of \$8,908. The amount of the increase from \$5,000 to \$8,908 is \$3,908, which is less than the statutory cap of 150 percent of the existing \$5,000 penalty, which is \$7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.620(a) is revised to increase the maximum penalty for violations specified therein from \$5,000 to \$8,908 for each alien crewmember with respect to whom there has been a violation.

b. Section 655.810—What remedies may be ordered if violations are found?

Section 212(n)(2)(C) of the INA, 8 U.S.C. 1182(n)(2)(C), and existing 20 CFR 655.810(b) provide for the imposition of civil money penalties for certain violations of the H–1B visa program. There are three levels of civil money penalties provided for by these authorities.

First, existing § 655.810(b)(1) provides for a civil money penalty, not to exceed \$1,000 per violation, for certain specific violations of the H–1B program. *See* § 655.810(b)(1)(i)–(vi). The maximum penalty amount last established by statute or regulation, other than the Prior Inflation Adjustment Act, was set in 1990 and is the same as the existing maximum penalty amount. *See* Immigration Act of 1990, Pub. L. 101–649, 205(3) (Nov. 29, 1990). In 1998, Congress amended the INA by, in part, providing for additional civil money penalties in the H–1B program, as discussed below. *See* American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Div. C, Title IV, of Pub. L. 105–277, 413(a) (Oct. 21, 1998). The 1998 amendments did not adjust the \$1,000 civil money penalty reflected in existing § 655.810(b)(1). Accordingly, we consider 1990 as the year in which this maximum penalty amount was last established by statute or regulation other than the Prior Inflation Adjustment Act.

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1990 of 1.78156, which resulted in a maximum penalty of \$1,782. The amount of the increase from \$1,000 to \$1,782 is \$782, which is less than the statutory cap of 150 percent of

the existing \$1,000 penalty, which is \$1,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.810(b)(1) is revised to increase the maximum penalty for violations specified therein from \$1,000 to \$1,782 per violation.

Second, existing § 655.810(b)(2) provides for a civil money penalty, not to exceed \$5,000 per violation for certain willful violations specified therein and for discrimination against an employee, as described in 20 CFR 655.801(a). The civil money penalty for discrimination against an employee is also referenced in § 655.801(b). The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 1998 and is the same as the existing maximum penalty amount. *See* ACWIA § 413(a).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1998 of 1.45023, which resulted in a maximum penalty of \$7,251. The amount of the increase from \$5,000 to \$7,251 is \$2,251, which is less than the statutory cap of 150 percent of the existing \$5,000 penalty, which is \$7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 655.810(b)(2) is revised to increase the maximum penalty for violations specified therein from \$5,000 per violation to \$7,251 per violation. Conforming changes to reflect the adjusted civil money penalty amount were also made to 20 CFR 655.801(b).

Third, existing § 655.810(b)(3) provides for a civil money penalty, not to exceed \$35,000 per violation, where an employer displaced a U.S. worker employed by the employer in the period beginning 90 days before and ending 90 days after the filing of an H–1B petition in conjunction with certain willful violations specified therein. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 1998 and is the same as the existing maximum penalty amount. *See* ACWIA § 413(a).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1998 of 1.45023, which resulted in a maximum penalty of \$50,758. The amount of the increase from \$35,000 to \$50,758 is \$15,758, which is less than the statutory cap of 150 percent of the existing \$35,000 penalty, which is \$52,500; accordingly, the amount of the increase is not limited

by the statutory cap. Consequently, § 655.810(b)(3) is revised to increase the maximum penalty for violations specified therein from \$35,000 to \$50,758 per violation.

B. Office of Workers' Compensation Programs (20 CFR Parts 702, 725, 726)

1. General

This section B of the preamble addresses the civil monetary penalties administered by Office of Workers' Compensation Programs (OWCP) to enforce provisions of the Longshore and Harbor Workers' Compensation Act (Longshore Act), and the Longshore Act extensions, the Defense Base Act, the District of Columbia Workmen's Compensation Act, the Outer Continental Shelf Lands Act, and the Black Lung Benefits Act (BLBA). Paragraphs 2(a) through (f) explain revisions to each of the civil penalties administered and enforced by OWCP.

2. Specific Penalty Increases

a. Section 702.204—Employer's Report; Penalty for Failure To Furnish and or Falsifying

Existing § 702.201 requires employers to furnish a report of an employee's injury (resulting in the loss of one or more shifts) or death within 10 days of the injury or death, or an employer's knowledge of the same, and to provide additional supplemental information upon request. Existing § 702.204 provides that an employer who, on or after November 17, 1997, knowingly and willfully fails or refuses to file any report required by § 702.201 or who knowingly or willfully makes a false statement or misrepresentation on any report shall be subject to a civil penalty not to exceed \$11,000 for each failure, refusal, false statement, or misrepresentation. It provides that an employer who does so before November 17, 1997 shall be subject to a civil penalty not to exceed \$10,000 for each instance. The maximum penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was \$10,000 in 1984. *See* Public Law 98–426.

To adjust the existing civil penalty for this section, the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, \$10,000, by the inflation adjustment factor for 1984 of 2.25867, which resulted in a penalty of \$22,587 (rounded to the nearest dollar). The amount of the increase from existing § 702.204's \$11,000 penalty to \$22,587 is \$11,587. \$11,587 is less than the statutory cap of 150 percent of the

existing \$11,000 penalty, which is \$16,500. Accordingly, the amount of the increase is not limited by the statutory cap. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 702.204 therefore increases the maximum penalty for each failure to furnish or falsifying an employer's report from \$11,000 to \$22,587.

b. Section 702.236—Penalty for Failure To Report Termination of Payments

Existing § 702.235 requires employers to notify the district director within 16 days after making a final payment of compensation. Existing § 702.236 provides that an employer who, on or after November 17, 1997, fails to notify the district director that a final payment of compensation has been made as required by § 702.235, shall be assessed a civil penalty in the amount of \$110. It provides that an employer who does so before November 17, 1997 shall be assessed a civil penalty in the amount of \$100. The penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was \$100 in 1927. *See* 33 U.S.C. 914(g).

To adjust the existing civil penalty for this section, the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, \$100, by the inflation adjustment factor for 1927 of 13.66885, which resulted in a penalty of \$1,367 (rounded to the nearest dollar). The amount of the increase from existing § 702.236's \$110 penalty to \$1,367 is \$1,257, which would be more than the statutory cap of 150 percent of the existing \$110 penalty, which is \$165. Accordingly, the amount of the increase is limited by the statutory cap to a total of \$165. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 702.236 therefore increases the penalty for failure to report termination of payments from \$110 to \$275 (the current \$110 penalty amount plus the \$165 statutory cap).

c. Section 702.271—Discrimination; Against Employees Who Bring Proceedings, Prohibition and Penalty

Existing § 702.271(a)(1) provides that no employer or its agent may discharge or in any manner discriminate against an employee as to his or her employment because that employee has claimed or attempted to claim compensation under the Longshore and Harbor Workers' Compensation Act, or has testified or is about to testify in a proceeding under that Act. Existing

§ 702.271(a)(2) provides that any employer who, on or after November 17, 1997, violates § 702.271 shall be liable for a penalty of not less than \$1,100 or more than \$5,500. It provides that an employer who does so before November 17, 1997 shall be liable for a penalty of not less than \$1,000 or more than \$5,000. The penalty amounts last established by statute or regulation other than pursuant to the Inflation Adjustment Act were a minimum amount of \$1,000 and a maximum amount of \$5,000 in 1984. *See* Public Law 98-426.

To adjust the civil penalties for this section, the Department multiplied the minimum and maximum penalty amounts last established by statute or regulation other than pursuant to the Inflation Adjustment Act, \$1,000 and \$5,000, respectively, by the inflation adjustment factor for 1984 of 2.25867, which resulted in a minimum penalty of \$2,259 (rounded to the nearest dollar) and a maximum penalty of \$11,293 (rounded to the nearest dollar). The amount of the increase from existing § 702.271(a)(2)'s \$1,100 minimum penalty to \$2,259 is \$1,159, which is less than the statutory cap of 150 percent of the existing \$1,100 minimum penalty, which is \$1,650. The amount of the increase from existing § 702.271(a)(2)'s \$5,500 maximum penalty to \$11,293 is \$5,793. \$5,793 is less than the statutory cap of 150 percent of the existing \$5,500 maximum penalty, which is \$8,250. Accordingly, neither the amount of the increased minimum nor the increased maximum penalty is limited by the statutory cap. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 702.271 therefore increases the minimum penalty for discrimination against employees who claim compensation or bring proceedings under the Act from \$1,100 to \$2,259, and increases the maximum penalty from \$5,500 to \$11,293.

The Department also changes the "that" in the first sentence of § 702.271(a)(2) to "than" to correct a typo in the regulation and twice corrects the phrase "liable to a penalty" to "liable for a penalty." No substantive change results from or is intended by these technical edits.

d. Section 725.621—Reports

Existing § 725.621(a) requires employers to notify the district director upon making a first payment of benefits and upon suspension, reduction, or increase of payments. Existing § 725.621(b) requires employers to notify the district director, within 16

days after making a final payment of benefits. Existing § 724.621(c) allows the Director to prescribe additional reporting by operators, other employers, or carriers. Existing § 725.621(d) provides that an employer who does not file a report required by the section, after January 19, 2001, shall be subject to a civil penalty not to exceed \$550 for each failure or refusal to file. It provides that an employer who does so on or before January 19, 2001, shall be subject to a civil penalty not to exceed \$500 for each failure or refusal to file. The maximum penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was \$500 in 1978. *See* Public Law 95-239.

To adjust the existing civil penalty for this section, the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, \$500, by the inflation adjustment factor for 1978 of 3.54453, which resulted in a penalty of \$1,772 (rounded to the nearest dollar). The amount of the increase from existing § 725.621(d)'s \$550 penalty to \$1,772 is \$1,222, which is more than the statutory cap of 150 percent of the existing \$550 penalty, which is \$825. Accordingly, the amount of the increase is limited by the statutory cap to a total of \$825. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 725.621 therefore increases the maximum penalty for each failure or refusal to furnish an employer's required report from \$550 to \$1,375 (the current \$550 penalty amount plus the \$825 statutory cap).

e. Section 726.300—Purpose and Scope

Section 423 of the Black Lung Benefits Act and existing § 726.4 require each coal mine operator to secure its liability for benefits either by qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or by insuring and keeping insured the payment of such benefits with a licensed workers' compensation insurer. 30 U.S.C. 933(a); 20 CFR 726.4. Section 423 also provides that each coal mine operator failing to meet its insurance obligation shall be subject to a civil money penalty of up to \$1,000 per day. 30 U.S.C. 933(d)(1). Existing § 726.300 identifies the purpose and scope of Subpart D of Part 726, which is to set forth definitions, criteria, and procedures for assessing this civil money penalty. In so doing, it references the Black Lung Benefits Act's maximum daily penalty of \$1,000. This statutory maximum, however, is adjusted by the

Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Thus, the existing regulation is amended to refer to the adjusted penalty amount authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

f. Section 726.302—Determination of Penalty

Existing § 726.302 provides the method for determining the amount of any penalty assessed against a coal mine operator for failure to secure the payment of benefits in violation of Section 423 of the Black Lung Benefits Act and existing § 726.4. Existing § 726.302(b) provides that the penalty will be calculated by multiplying the daily base penalty amount or amounts by the number of days during which the operator was required to and failed to secure its obligations. Existing § 726.302(c)(i) explains that the daily base penalty amount is \$100 per day for operators employing fewer than 25 employees, \$200 per day for operators employing 25 to 50 employees, \$300 per day for operators employing 51 to 100 employees, and \$400 per day for operators employing more than 100 employees. Existing § 726.302(c)(4) provides that the daily base penalty amounts in § 726.302(c)(2)(i) will increase by \$100 on the 11th day after the operator receives the Director's notice of violation. Existing § 726.302(c)(5) provides that if an operator or certain of its related entities has violated § 726.4 and been assessed a penalty, the daily base penalty amount shall increase by \$300. It also provides that an operator who violates § 726.4 after January 19, 2001, shall be subject to a maximum daily base penalty of \$1,100, and that an operator that violates it on or before January 19, 2001, shall be subject to a maximum daily base penalty amount of \$1,000. The daily base penalty amounts and increases in paragraphs (c)(2)(i), (c)(4), and (c)(5) were established by regulation in 2001 and have not subsequently been increased by the Inflation Adjustment Act or otherwise. *See* 65 FR 79920. The maximum daily base penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act was \$1,000 in 1978. *See* Public Law 95–239.

To adjust the existing daily base penalty for operators employing fewer than 25 employees, the Department multiplied the existing \$100 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of \$134 (rounded to the nearest dollar). To adjust the existing daily base penalty for operators employing 25 to 50

employees, the Department multiplied the existing \$200 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of \$268 (rounded to the nearest dollar). To adjust the existing daily base penalty for operators employing 51 to 100 employees, the Department multiplied the existing \$300 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of \$402 (rounded to the nearest dollar). To adjust the existing daily base penalty for operators employing more than 100 employees, the Department multiplied the existing \$400 penalty by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty of \$535 (rounded to the nearest dollar). To adjust the existing daily base penalty increase for operators who fail to respond to the Director's notice of violation more than 10 days after receipt in paragraph (c)(4), the Department multiplied the existing \$100 penalty increase by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty increase of \$134 (rounded to the nearest dollar). To adjust the existing daily base penalty increase for operators who have been subject to a previous penalty assessment in paragraph (c)(5), the Department multiplied the existing \$300 penalty increase by the inflation adjustment factor for 2001 of 1.33842, which resulted in a penalty increase of \$402 (rounded to the nearest dollar). The Department has not previously updated these penalty amounts pursuant to the Inflation Adjustment Act and the multiplier for each (1.33842) is less than 2.5, the penalty amount (100 percent) plus the statutory cap (150 percent). Thus, the amount of the increase for each is necessarily less than the statutory cap of 150 percent of the existing penalty amount. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 726.302 therefore increases the daily base penalty for operators employing fewer than 25 employees from \$100 to \$134; increases the daily base penalty for operators employing 25 to 50 employees from \$200 to \$268; increases the daily base penalty for operators employing 51 to 100 employees from \$300 to \$402; increases the daily base penalty for operators employing more than 100 employees from \$400 to \$535; increases the daily base penalty increase for operators who continue to be in violation more than 10 days after receiving the Director's notice of violation from \$100 to \$134; and increases the daily base penalty increase

for operators who have been subject to a previous penalty assessment from \$300 to \$402.

To adjust the existing maximum daily base penalty in paragraph (c)(5), the Department multiplied the penalty amount last established by statute or regulation other than pursuant to the Inflation Adjustment Act, \$1,000, by the inflation adjustment factor for 1978 of 3.54453, which resulted in a penalty of \$3,545 (rounded to the nearest dollar). The amount of the increase from existing § 726.302(c)(5)'s \$1,100 maximum penalty to \$3,545 is \$2,445, which is more than the statutory cap of 150 percent of the existing \$1,100 penalty, which is \$1,650. Accordingly, the amount of the increase is limited by the statutory cap to a total of \$1,650. For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, final § 726.302 therefore increases the maximum daily base penalty for any violation of § 726.4 from \$1,100 to \$2,750 (the current \$1,100 penalty amount plus the \$1,650 statutory cap).

The Department also moves discussion of the maximum daily base penalty from subparagraph (c)(5) to new subparagraph (c)(6) for greater clarity. No substantive change results from or is intended by this technical edit.

C. Office of the Secretary (29 CFR Part 5 and 41 CFR Part 50–201)

1. General

This section C of the preamble addresses the civil monetary penalties provisions of the Contract Work Hours and Safety Standards Act (CWHSSA) and the Walsh-Healey Public Contracts Act (PCA), as amended. These provisions are included in regulations established by the Office of the Secretary, which have been delegated to WHD for enforcement. Paragraphs 2(a) and (b) explain revisions to each of these civil money penalties.

2. Specific Penalty Increases

a. Section 5.8(a)—Liquidated Damages Under the Contract Work Hours and Safety Standards Act

Section 3702(c) of title 40 of the United States Code and existing 29 CFR 5.8(a) impose “liquidated damages” if a laborer or mechanic is not paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek on contracts covered by CWHSSA, to be computed with respect to each laborer or mechanic employed

in violation of CWHSSA.⁴ The penalty amount of \$10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages was last established by statute or regulation other than the Prior Inflation Adjustment Act in 1962 and is the same as the existing penalty amount. *See* Contract Work Hours Standards Act, Title I of Public Law 87–581, § 102(b)(2) (Aug. 13, 1962).

To adjust the existing penalty for this section, the Department multiplied that penalty amount of \$10 by the inflation adjustment factor for 1962 of 7.82362, which would have resulted in a penalty of \$78. The amount of the increase from \$10 to \$78 is \$68, which exceeds the statutory cap of 150 percent of the existing \$10, which is \$15; accordingly, the amount of the increase is limited by the statutory cap to a total of \$15. Consequently, § 5.8(a) is revised to increase the penalty if a laborer or mechanic is not paid wages at least one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek from \$10 to \$25 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Conforming changes to reflect the adjusted penalty amount were also made to § 5.5(b)(2).

b. Section 50–201.3—Public Contracts, Department of Labor; Insertion of Stipulations.

Section 6503(b)(1) of title 41 of the United States Code and existing 41 CFR 50–201.3(e) impose “liquidated damages”⁵ of \$10 per day for each individual under 16 years of age and each incarcerated individual knowingly employed in the performance of a

contract covered by the PCA, as amended. The penalty amount of \$10 for each day and for each individual under 16 years of age and each incarcerated individual knowingly employed was last established by statute or regulation other than the Prior Inflation Adjustment Act in 1936 and is the same as the existing penalty amount. *See* Walsh-Healey Act of 1936, 49 Stat. 2036, § 2 (June 30, 1936).

To adjust the existing civil money penalty for this section, the Department multiplied that penalty amount of \$10 by the inflation adjustment factor for 1936 of 16.98843, which would have resulted in a penalty of \$170. The amount of the increase from \$10 to \$170 is \$160, which exceeds the statutory cap of 150 percent of the existing \$10 penalty, which is \$15. Accordingly, the amount of the increase is limited by the statutory cap to a total of \$15. Consequently, § 50–201.3(e) is revised to increase the penalty for the knowing employment on a covered contract of individuals under 16 or who are incarcerated from \$10 to \$25 per day.

D. Wage and Hour Division (29 CFR Parts 500, 501, 530, 570, 578, 579, 801, 825)

1. General

This section D of the preamble addresses the civil monetary penalties administered by WHD to enforce provisions of the Migrant and Seasonal Agricultural Worker Protection Act, the Immigration and Nationality Act,⁶ the Fair Labor Standards Act, the Employee Polygraph Protection Act, and the Family and Medical Leave Act. Paragraphs 2(a) through (g) explain revisions to each of these civil penalties administered and enforced by WHD.

a. Section 500.1—Purpose and Scope

Section 503(a)(1) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1853(a)(1), and existing 29 CFR 500.1(e), authorize the Secretary to impose a civil money penalty of not more than \$1,000 per violation on persons who violate MSPA or any regulation under MSPA. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 1983 and is the same as the existing maximum penalty amount. *See* MSPA, Public Law 97–470 (Jan. 14, 1983).

⁶ The Department and the Department of Homeland Security are jointly publishing a separate IFR to implement the Inflation Adjustment Act's requirements with respect to the civil money penalty provisions found at 29 CFR 503.23.

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1983 of 2.35483, which resulted in a maximum penalty of \$2,355. The amount of the increase from \$1,000 to \$2,355 is \$1,355, which is less than the statutory cap of 150 percent of the existing \$1,000 penalty, which is \$1,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 500.1(e) is revised to increase the maximum penalty for violations of MSPA or the MSPA regulations from \$1,000 to \$2,355 per violation.

b. Section 501.19—Civil Money Penalty Assessment

Section 218(g)(2) of the INA, 8 U.S.C. 1188(g)(2), authorizes the Secretary of Labor to impose appropriate penalties in order to assure employer compliance with the terms and conditions of employment under the H–2A visa program. Pursuant to this and other authorities, the Secretary has promulgated regulations through notice and comment rulemaking regarding the assessment of civil money penalties. *See, e.g.,* Final Rule, Temporary Agricultural Employment of H–2A Aliens in the United States, 75 FR 6884 (Feb. 12, 2010) (codified at 29 CFR part 501 and 20 CFR part 655) (2010 H–2A Final Rule). 29 CFR 501.19(a) of these regulations provides for the imposition of civil money penalties for each violation of the work contract, or the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in 29 CFR part 501. Section 501.19(c) through (f) provides the maximum civil money penalty amounts for various violations as specified below.

First, existing § 501.19(c) provides that a civil money penalty for each violation of the work contract or of the H–2A visa program's statutory or regulatory requirements will not exceed \$1,500 per violation, with exceptions as specified below. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H–2A Final Rule.

To adjust the existing civil money penalty for § 501.19(c), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of \$1,631. The amount of the increase from \$1,500 to \$1,631 is \$131, which is less than the statutory cap of 150 percent of

⁴ Although the statute and regulation refer to the amount assessed as “liquidated damages” it is appropriate to treat the amount as a civil money penalty for purposes of the Inflation Adjustment Act because the amount due is paid to the government, not the laborer or mechanic. Indeed, the Department of Labor has long recognized that the CWHSSA damages provision “operate[s] as [a] civil monetary penalty[.]” Letter to Honorable Carl Levin, Chairman, Subcommittee on Oversight of Government Management, from Ann McLaughlin, Secretary of Labor, (Feb. 22, 1988).

⁵ Although the statute and regulation refer to the amount assessed as “liquidated damages” it is appropriate to treat the amount as a civil money penalty for purposes of the Inflation Adjustment Act because the amount due is paid to the government, not the worker. Indeed, the Department of Labor has long recognized that the Walsh-Healey Public Contracts Act damages provision “operate[s] as [a] civil monetary penalty[.]” Letter to Honorable Carl Levin, Chairman, Subcommittee on Oversight of Government Management, from Ann McLaughlin, Secretary of Labor, (Feb. 22, 1988).

the existing \$1,500 penalty, which is \$2,250; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c) is revised to increase the maximum penalty for violations specified therein from \$1,500 to \$1,631 per violation.

Second, existing § 501.19(c)(1) provides that a civil money penalty for each willful violation of the work contract, of the H-2A visa program's statutory or regulatory requirements, or for each act of discrimination prohibited by § 501.4 shall not exceed \$5,000. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2008 and is the same as the existing maximum penalty amount. *See* Final Rule, Temporary Agricultural Employment of H-2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement, 73 FR 77,110 (Dec. 18, 2008) (2008 H-2A Final Rule). This penalty amount was not adjusted by the H-2A 2010 Final Rule. Accordingly, we consider 2008 as the year in which this maximum penalty amount was last established by statute or regulation other than the Prior Inflation Adjustment Act.

To adjust the existing civil money penalty for § 501.19(c)(1), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of \$5,491. The amount of the increase from \$5,000 to \$5,491 is \$491, which is less than the statutory cap of 150 percent of the existing \$5,000 penalty, which is \$7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c)(1) is revised to increase the maximum penalty for violations specified therein from \$5,000 to \$5,491.

Third, existing § 501.19(c)(2) provides that a civil money penalty for a violation of a housing or transportation safety and health provision of the work contract or of the H-2A visa program's statutory or regulatory requirements that proximately causes the death or serious injury of any worker shall not exceed \$50,000 per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H-2A Final Rule.

To adjust the existing civil money penalty for § 501.19(c)(2), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty

of \$54,373. The amount of the increase from \$50,000 to \$54,373 is \$4,373, which is less than the statutory cap of 150 percent of the existing \$50,000 penalty, which is \$75,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c)(2) is revised to increase the maximum penalty for violations specified therein from \$50,000 to \$54,373 per worker.

Fourth, existing § 501.19(c)(4) provides that a civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract or of the H-2A visa program's statutory or regulatory requirements that proximately causes the death or serious injury of any worker shall not exceed \$100,000 per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H-2A Final Rule.

To adjust the existing civil money penalty for § 501.19(c)(4), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of \$108,745. The amount of the increase from \$100,000 to \$108,745 is \$8,745, which is less than the statutory cap of 150 percent of the existing \$100,000 penalty, which is \$150,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(c)(4) is revised to increase the maximum penalty for violations specified therein from \$100,000 to \$108,745 per worker.

Fifth, existing § 501.19(d) provides that a civil money penalty for failure to cooperate with a WHD investigation shall not exceed \$5,000 per investigation. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2008 and is the same as the existing maximum penalty amount. *See* 2008 H-2A Final Rule. This penalty amount was not adjusted by the H-2A 2010 Final Rule. Accordingly, we consider 2008 as the year in which this maximum penalty amount was last established by statute or regulation other than the Prior Inflation Adjustment Act.

To adjust the existing civil money penalty for § 501.19(d), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of \$5,491. The amount of the increase from \$5,000 to \$5,491 is \$491, which is less

than the statutory cap of 150 percent of the existing \$5,000 penalty, which is \$7,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(d) is revised to increase the maximum penalty for failure to cooperate with a WHD investigation from \$5,000 to \$5,491 per investigation.

Sixth, existing § 501.19(e) provides that a civil money penalty for laying off or displacing any U.S. worker employed, under the circumstances specified therein, shall not exceed \$15,000 per violation per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H-2A Final Rule.

To adjust the existing civil money penalty for § 501.19(e), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of \$16,312. The amount of the increase from \$15,000 to \$16,312 is \$1,312, which is less than the statutory cap of 150 percent of the existing \$15,000 penalty, which is \$22,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(e) is revised to increase the maximum penalty for violations specified therein from \$15,000 to \$16,312 per violation per worker.

Finally, existing § 501.19(f) provides that a civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of the H-2A visa program's statutory or regulatory requirements, shall not exceed \$15,000 per violation per worker. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was set in 2010 and is the same as the existing maximum penalty amount. *See* 2010 H-2A Final Rule.

To adjust the existing civil money penalty for § 501.19(f), the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2010 of 1.08745, which resulted in a maximum penalty of \$16,312. The amount of the increase from \$15,000 to \$16,312 is \$1,312, which is less than the statutory cap of 150 percent of the existing \$15,000 penalty, which is \$22,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 501.19(f) is revised to increase the maximum penalty for violations

specified therein from \$15,000 to \$16,312 per violation per worker.

c. Section 530.302—Amounts of Civil Money Penalties

Section 11(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 211(d), authorizes the Administrator of the WHD to issue such regulations and orders as necessary to assure compliance with the FLSA's requirements with respect to industrial homework. Pursuant to this and other authorities, the Administrator has

promulgated regulations through notice and comment rulemaking. *See* Final Rule, Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers, 53 FR 45706 (Nov. 10, 1988) (codified at 29 CFR parts 516 and 530). Section 530.302 of these regulations provides for the imposition of civil money penalties. Existing § 530.302(a) imposes a civil money penalty of not more than \$500 per affected homeworke⁷ for any violation of the FLSA related to homework⁷, or of

part 530, or of the assurances given in connection with the issuance of a homeworke⁷ certificate. Existing § 530.302(b) states that the amount of civil money penalties shall be determined per affected homeworke⁷ within the limits set forth in a following table, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature. The table appears in the existing regulation as follows in Table A:

TABLE A—EXISTING HOMEWORK PENALTIES

Nature of violation	Penalty per affected homeworke ⁷		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	\$10–100	\$100–200	\$200–500
Monetary violations	\$10–100	\$100–200
Employment of homeworke ⁷ without a certificate	\$100–200	\$200–500
Other violations of statutes, regulations or employer assurances	\$10–100	\$100–200	\$200–500

The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was \$500 in 1988 and is the same as the existing maximum penalty amount. *See* 53 FR 45706, 45724.

To adjust the existing civil money penalty for this section, the Department multiplied the maximum penalty amount of \$500 by the inflation adjustment factor for 1988 of 1.97869, which resulted in a maximum penalty of \$989. The amount of the increase from \$500 to \$989 is \$489, which is less than the statutory cap of 150 percent of the existing \$500 penalty, which is \$750; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 530.302(a) and (b) are revised to increase the maximum penalty from \$500 to \$989 and the percentage of that maximum penalty amount for minor (2 percent to 20 percent); substantial (20 percent to 40 percent); or repeated, intentional, or knowing (40 percent to 100 percent) violations by the same percentages of the adjusted maximum penalty amount as under the existing section. As a result, the revised penalty amounts are \$20–198 for a minor violation; \$198–396 for a substantial violation; and \$396–989 for a repeated, intentional, or knowing violation.

d. Section 578.3—What types of violations may result in a penalty being assessed?

Section 16(e)(2) of the FLSA, 29 U.S.C. 216(e)(2), and existing 29 CFR 578.3(a), provide for the assessment of civil money penalties for any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the FLSA. Existing § 578.3(a) provides for a civil money penalty of up to \$1,100 per violation, and that level is the result of an inflation adjustment in 2001. *See* Final Rule, Adjustment of Civil Money Penalties for Inflation, 66 FR 63501 (Dec. 7, 2001). The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was \$1,000 in 1989. *See* Fair Labor Standards Amendments of 1989, Pub. L. 101–157, § 9 (Nov. 17, 1989).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1989 of 1.89361, which resulted in a maximum penalty of \$1,894. The amount of the increase from \$1,100 to \$1,894 is \$794, which is less than the statutory cap of 150 percent of the existing \$1,100 penalty, which is \$1,650; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 578.3(a) is revised to increase the maximum penalty for a repeated or

willful violation of section 6 (minimum wage) or section 7 (overtime) of the FLSA from \$1,100 to \$1,894 per violation.

Conforming changes to reflect the adjusted maximum civil money penalty amount were also made to § 579.1(a)(2). In addition, historical information concerning penalties for repeated or willful violations of Sections 6 or 7 of the FLSA contained in 29 CFR 578.1 is revised to reflect the passage of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74) and its requirement to make civil money penalty adjustments annually.

e. Section 579.1—Purpose and Scope

Section 16(e)(1)(A) of the FLSA and existing 29 CFR 579.1(a)(1)(i) provide for the imposition of civil money penalties for any violations of the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections. There are three levels of civil money penalties provided for by these authorities.

First, existing § 579.1(a)(1)(i)(A) provides for a civil money penalty, not to exceed \$11,000, for each employee who was the subject of a child labor violation. This penalty corresponds to the statutory provision at 29 U.S.C. 216(e)(1)(A)(i). The penalty amount last established by statute or regulation for this provision other than the Prior

⁷ Except for child labor violations, which are covered under 29 CFR part 579.

Inflation Adjustment Act was \$11,000 in 2008. *See* Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. 110–233, § 302(a) (May 21, 2008).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of \$12,080. The amount of the increase from \$11,000 to \$12,080 is \$1,080, which is less than the statutory cap of 150 percent of the existing \$11,000 penalty, which is \$16,500; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 579.1(a)(1)(i)(A) is revised to increase the maximum penalty for violations of the provisions of sections 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to such sections, from \$11,000 to \$12,080 for each employee who was the subject of such a violation.

Conforming changes to reflect the adjusted maximum civil money penalty amount were also made to 29 CFR 570.140(b)(1).

Second, existing § 579.1(a)(1)(i)(B) provides for a civil money penalty, not to exceed \$50,000, for each violation of section 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to those sections that causes the death or serious injury of any employee under the age of 18 years. This penalty corresponds to the statutory provision at 29 U.S.C. 216(e)(1)(A)(ii). That maximum amount was last established by statute or regulation other than the Prior Inflation Adjustment Act in 2008 and is the same as the existing maximum penalty amount. *See* GINA § 302(a).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 2008 of 1.09819, which resulted in a maximum penalty of \$54,910. The amount of the increase from \$50,000 to \$54,910 is \$4,910, which is less than the statutory cap of 150 percent of the existing \$50,000 penalty, which is \$75,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 579.1(a)(1)(i)(B) is revised to increase the maximum penalty for violations of that provision, from \$50,000 to \$54,910 for each such violation.

Section 579.5(a) has also been revised to remove superfluous language regarding the effective date of this civil money penalty. Conforming changes to reflect the adjusted maximum civil

money penalty amount were also made to 29 CFR 570.140(b)(2).

Third, existing § 579.1(a)(1)(i)(B) also provides that the maximum penalty for a violation of section 12 or 13(c) of the FLSA, relating to child labor, or any regulation issued pursuant to those sections that causes the death or serious injury of any employee under the age of 18 years may be doubled if the violation is repeated or willful. Therefore, under revised § 579.1(a)(1)(i)(B), the maximum penalty amount for such a willful or repeated violation is calculated by doubling the adjusted penalty of \$54,910 for a child labor violation resulting in serious injury or death (*i.e.*, \$109,820). No change to regulatory text is needed to make this adjustment.

In addition, existing § 579.1(a) and (b) are revised to reflect the passage of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74) and its requirement to make civil money penalty adjustments annually, and to remove superseded information regarding the effective date of increased civil money penalties.

f. Section 801.42—Civil Money Penalties—Assessment

Section 6(a)(1) of the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. 2005(a)(1) and existing 29 CFR 801.42(a) impose a civil money penalty of not more than \$10,000 for any violation of the EPPA or of part 801. The maximum penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was \$10,000 in 1988 and is the same as the existing maximum penalty amount. *See* EPPA, Pub. L. 100–347 (June 27, 1988).

To adjust the existing civil money penalty for this section, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1988 of 1.97869, which resulted in a penalty of \$19,787. The amount of the increase from \$10,000 to \$19,787 is \$9,787, which is less than the statutory cap of 150 percent of the existing \$10,000 penalty, which is \$15,000; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 801.42(a) is revised to increase the maximum penalty for a violation of the EPPA from \$10,000 to \$19,787.

g. Section 825.300—Employer Notice Requirements

Section 109(b) of the Family and Medical Leave Act (FMLA), as amended, 29 U.S.C. 2619(b), and existing 29 CFR 825.300(a)(1) provide for the assessment of a civil money

penalty for each willful violation of the posting requirement of the FMLA. Existing § 825.300(a)(1) provides for a civil money penalty of up to \$110 for each separate offense, and that level is the result of an inflation adjustment in 2008. *See* Final Rule, The Family and Medical Leave Act of 1993, 73 FR 67934 (Nov. 17, 2008). The penalty amount last established by statute or regulation other than the Prior Inflation Adjustment Act was \$100 in 1993. *See* FMLA of 1993, Pub. L. 103–3, § 109(b) (Feb. 5, 1993).

To adjust the existing civil money penalty for this paragraph, the Department multiplied that maximum penalty amount by the inflation adjustment factor for 1993 of 1.63238, which resulted in a maximum penalty of \$163. The amount of the increase from \$110 to \$163 is \$53, which is less than the statutory cap of 150 percent of the existing \$110 penalty, which is \$165; accordingly, the amount of the increase is not limited by the statutory cap. Consequently, § 578.300(a)(1) is revised to increase the penalty for violations of the posting requirement of the FMLA from \$110 to \$163 for each separate offense.

E. Occupational Safety and Health Administration (29 CFR Parts 1902, 1903)

1. General

This section E of the preamble addresses the civil monetary penalties administered by the Occupational Safety and Health Administration (OSHA) to enforce provisions of the Occupational Safety & Health Act of 1970 (OSH Act), as amended. Paragraph 2(a) explains conforming edits to the agency's State Plan regulations. Paragraph 2(b) explains revisions to each of the civil penalties administered and enforced by OSHA.

2. Specific Penalty Increases

a. Section 1902.4(c)(2)(xi)—Indices of Effectiveness

Section 18(c)(2) of the OSH Act provides that a State may assume responsibility for development and enforcement of its own occupational safety and health standards by submitting a State Plan. State Plan regulations at 29 CFR 1902.3(c)(1) and (d)(1) provide that State Plans must develop or adopt occupational safety and health standards and an enforcement program for those standards that are at least as effective as federal OSHA's standards and enforcement program. Existing § 1902.4(c)(2)(xi) provides that in order to satisfy this requirement of

effectiveness, State Plans must have effective sanctions, such as those prescribed in the OSH Act. This IFR amends § 1902.4(c)(2)(xi) to clarify that State Plans must provide sanctions as effective as those set forth in the OSH Act and in § 1903.15(d), against private-sector employers who violate State standards and orders.

b. Section 1903.15—OSH Act Penalties

The penalty amounts set forth in section 17(a) to (d) and (i) of the OSH Act (29 U.S.C. 666(a) to (d) and (i)) were last updated by the Omnibus Budget Reconciliation Act of 1990 on November 5, 1990. Pub. L. 101–508. To adjust the civil penalties for Section 17(a) to (d) and (i), the Department multiplied the penalty amounts by the inflation adjustment factor for 1990 of 1.78156. None of the resulting penalty amounts exceeded the 150 percent statutory cap. Other references to penalty amounts in Part 1903 are also amended by the new penalty amounts set out in § 1903.15(d).

i. Willful or Repeated Violation of the OSH Act, 29 U.S.C 666(a)

Section 17(a) of the OSH Act, 29 U.S.C 666(a), provides that employers who willfully or repeatedly violate the requirements of section 5 of the OSH Act, any standards, rules or orders promulgated under section 6 of the OSH Act, or applicable regulations may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation. No minimum penalty is set forth in the OSH Act for repeated violations. To adjust the existing civil money penalty for this paragraph, the Department multiplied the penalty amounts by the inflation adjustment factor for 1990 of 1.78156, which resulted in a maximum penalty of \$124,709 for willful and repeated violations, and a minimum penalty of \$8,908 for willful violations. The updated civil monetary penalties for willful and repeated violations are set out in § 1903.15(d)(1) and (2).

ii. Serious Violation of the OSH Act of 1970, 29 U.S.C 666(b)

Section 17(b) of the OSH Act, 29 U.S.C 666(b), provides that employers who have received a citation for a serious violation of the requirements of section 5 of the OSH Act, of any standard, rule, or order promulgated under section 6 of the OSH Act, or applicable regulations may be assessed a civil penalty up to \$7,000 for each violation. After applying the inflation adjustment factor, the penalty amounts were rounded to the nearest dollar, which resulted in a maximum penalty of \$12,471. The updated maximum civil

monetary penalty for serious violations is set out in § 1903.15(d)(3).

iii. Other-Than-Serious Violation of the OSH Act of 1970, 29 U.S.C 666(c)

Section 17(c) of the OSH Act, 29 U.S.C 666(c), provides that employers who have received a citation for a violation of the requirements of section 5 of the OSH Act, any standard, rule or order promulgated under section 6 of the OSH Act, or applicable regulations, and such violation is determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each violation. After applying the inflation adjustment factor, the penalty amounts were rounded to the nearest dollar, which resulted in a maximum penalty of \$12,471 for each day during which such failure or violation continues. The updated maximum civil monetary penalty for other-than-serious violations is set out in § 1903.15(d)(4).

iv. Failure To Correct a Violation of the OSH Act of 1970, 29 U.S.C 666(d)

Section 17(d), 29 U.S.C 666(d), provides that any employer who fails to correct a violation for which a citation has been issued under section 9(a) of the OSH Act within the period permitted for the correction may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues. After applying the inflation adjustment factor, the penalty amounts are rounded to the nearest dollar, which resulted in a maximum penalty of \$12,471. The updated maximum civil monetary penalty for failing to correct a violation is set out in § 1903.15(d)(5).

v. Violation of a Posting Requirement of the OSH Act of 1970, 29 U.S.C 666(i)

Section 17(i) of the OSH Act, 29 U.S.C. 666(i), provides that employers who violate any of the posting requirements, as prescribed under provisions of the OSH Act, shall be assessed a civil penalty of up to \$7,000 for each violation. After applying the inflation adjustment factor, the penalty amounts are rounded to the nearest dollar, which resulted in a maximum penalty of \$12,471. The updated maximum civil monetary penalty for violations of the posting requirements is set out in § 1903.15(d)(6).

F. Employee Benefits Security Administration (29 CFR Part 2560, 2575, 2590)

1. General

This section F of the preamble addresses the civil monetary penalties administered by EBSA to enforce title I of the Employee Retirement Income

Security Act of 1974, as amended, (ERISA). Paragraph 2(a) explains how the Department determined the date each civil monetary penalty was last adjusted by law or regulation (other than the Prior Inflation Adjustment Act, as amended), and Paragraph 2(b) describes the calculation of the catch-up adjustment for each ERISA civil monetary penalty through the use of a table. Paragraph 2(c) addresses the restructuring of 29 CFR part 2575 and other technical changes to the Department's regulations needed to reflect the amendments made to the Prior Inflation Adjustment Act by the Inflation Adjustment Act.

2. Specific Penalty Increases

a. Determination of Date Civil Monetary Penalty was Last Adjusted by Law or Regulation (Other Than the Prior Inflation Adjustment Act)

Section 5(b)(2)(B) of the Inflation Adjustment Act states that the initial cost-of-living adjustment (*i.e.*, catch-up adjustment) shall be applied to the “amount of the civil monetary penalty as it was most recently established or adjusted under a provision of law other than the [Prior Inflation Adjustment Act].” OMB guidance clarifies that the definition of the term “law” includes regulations where the statute grants the agency authority to establish a penalty or the dollar amount of the penalty by regulation. The Department has determined that no ERISA penalty amount has been adjusted by regulation or statute (other than the Prior Inflation Adjustment Act) subsequent to the enactment of the statute that established the initial amount of the penalty.

Certain ERISA civil monetary penalties apply to violations of more than one ERISA provision. For example, new violations of ERISA were subsequently added to the civil penalty provisions of sections 502(c)(4), and 502(c)(7).⁸ The addition of a violation to an existing penalty statute neither establishes nor adjusts the “amount of the civil monetary penalty” within the meaning of section 5(b)(2)(B) of the Inflation Adjustment Act. Because no ERISA civil monetary penalty amount has been adjusted by law (other than the Prior Inflation Adjustment Act) subsequent to its establishment, the enactment date of an ERISA penalty statute rather than the date a violation first becomes subject to the penalty

⁸ Section 502(c)(4) was enacted in 1993 by Pub. L. 103–66, 107 Stat.312. A new violation was added to section 502(c)(4) in 2006 by Pub. L. 109–280, 120 Stat. 780. Section 502(c)(7) was enacted in 2002 by Pub. L. 107–204, 116 Stat. 745. Section 502(c)(7) also was amended in 2006 by Pub. L. 109–208, 120 Stat. 780, to add a new violation.

determines both the amount of and the date from which the penalty is adjusted. For example, a failure to furnish certain multiemployer plan financial and actuarial information upon request under section 101(k) of ERISA will be subject to a penalty under ERISA section 502(c)(4) adjusted for inflation

from 1993 (the year of enactment of section 502(c)(4), even though section 101(k) violations did not become subject to section 502(c)(4) until 2008.⁹ This interpretation tracks the language of the statute and ensures that ERISA violations subject to the same penalty are adjusted for inflation in a consistent

manner. The Department is of the view that this consistency will in turn reduce both confusion and, ultimately, the burden upon the regulated community.

The enactment dates of the ERISA statutes establishing the amount of the civil monetary penalties follow in Table B:

TABLE B—ENACTMENT DATES

Penalty statute: U.S.C. and ERISA citations	Law (other than prior Inflation Adjustment Act) most recently establishing amount of ERISA civil monetary penalties	Enactment date
29 U.S.C. § 1059(b)/ERISA § 209(b)	Section 209(b) of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 88 Stat. 829.	September 2, 1974.
29 U.S.C. § 1132(c)(2)/ERISA § 502(c)(2)	Section 9342(c)(2) of the Omnibus Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330.	December 22, 1987.
29 U.S.C. § 1132(c)(4)/ERISA § 502(c)(4)	Section 4301(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 312.	August 10, 1993. ¹⁰
29 U.S.C. § 1132(c)(5)/ERISA § 502(c)(5)	Section 101(e)(2) of the Health Insurance and Portability and Accountability Act of 1996, Pub. L. 104–91, 110 Stat. 1936.	August 21, 1996.
29 U.S.C. § 1132(c)(6)/ERISA § 502(c)(6)	Section 1503(c)(2)(B) of the Taxpayer Relief Act of 1997, Pub. L. 105–34, 111 Stat. 788.	August 5, 1997.
29 U.S.C. § 1132(c)(7)/ERISA § 502(c)(7)	Section 306(b)(3) of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745.	July 30, 2002.
29 U.S.C. § 1132(c)(8)/ERISA § 502(c)(8)	Section 202(b)(3) of the Pension Protection Act of 2006 (PPA), Pub. L. 109–280, 120 Stat. 780.	August 17, 2006.
29 U.S.C. § 1132(c)(9)(A)/ERISA § 502(c)(9)(A).	Section 311(b)(1)(E) of the Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. 111–3, 123 Stat. 8.	February 4, 2009.
29 U.S.C. § 1132(c)(9)(B)/ERISA § 502(c)(9)(B).	Section 311(b)(1)(E) of the Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. 111–3, 123 Stat. 8.	February 4, 2009.
29 U.S.C. § 1132(c)(10)/ERISA §§ 502(c)(10)(B)(i), (C)(i), (C) (ii), and (D)(iii)(II).	Section 101(e) of the Genetic Information Nondiscrimination Act of 2008, Pub. L. 110–233, 122 Stat. 881.	May 21, 2008.
29 U.S.C. § 1132(c)(12)/ERISA § 502(c)(12).	Section 102(b)(6)(B) of the Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. 113–97, 128 Stat. 1101.	April 7, 2014.
29 U.S.C. § 1132(m)/ERISA § 502(m)	Section 761(a)(9)(B)(ii) of the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809.	December 8, 1994.
29 U.S.C. § 1185d and 42 U.S.C. § 300gg–15/ERISA § 715.	Sections 1001(5) and 1562(e) of the Patient Protection and Affordable Care Act, Pub. L. 111–148, 124 Stat. 119.	March 23, 2010.

b. Calculation of Catch-Up Inflation Adjustment

Table C shows the calculation of the catch-up adjustment. Column (1) contains the United States Code and ERISA citations for the penalty statute. Column (2) contains the dollar amount most recently established by law (other than the Prior Inflation Adjustment Act) for each ERISA civil monetary penalty along with a description of the violations subject to the penalty. Column (3) sets out the year the amount

of the civil monetary penalty was most recently established by law (other than the Prior Inflation Adjustment Act) based on the date of enactment found in Table B. Column (4) sets out the factor determined by OMB to adjust for inflation from October of the corresponding year in column (3) to October 2015. Column (5) sets out the adjusted civil monetary penalty resulting from the product of the dollar amount of the civil monetary penalty set out in Column (2) multiplied by the inflation factor in column (4). Column

(6) sets out the actual civil monetary penalty in effect on November 2, 2015. Column (7) sets out the maximum catch-up penalty, which is the sum of the penalty amount in Column (6) plus the maximum penalty increase of 150 percent for a total of 250 percent of the 2015 penalty.¹¹ Column (8) reflects the actual catch-up penalty, effective August 1, 2016, which is the lesser of the adjusted civil monetary penalty in Column (5) or the maximum civil monetary penalty in Column (7).

⁹Pub. L. 109–280, August 17, 2006, effective for failures occurring in plan years beginning after 2007.

¹⁰Initially, section 502(c)(4) applied to a failure of a group health plan administrator to furnish information to the Medicare Medicaid Coverage Data Bank under former section 101(f) of ERISA. This requirement was repealed effective October 2, 1996, by the Child Support Incentive Act of 1998, Pub. L. 105–200. The reference to section 101(f) in

section 502(c)(4) was deleted and replaced with a reference to violation of the notice requirements of section 302(b)(7)(F)(vi) of ERISA by section 104(a)(2) of the Pension Funding Equity Act of 2004, Pub. L. 108–218. Sections 103(b)(2), 502(a)(2), 502(b)(2) and 902(f)(2) of the PPA deleted the reference to section 302(b)(7)(F)(vi) and replaced it with references to violations of sections 101(j), 101(k), 101(l) and section 514(e)(3) of ERISA.

¹¹Section 5(2)(b)(C) of the Inflation Adjustment Act states that increase in the penalty resulting from the initial or catch-up adjustment may not be greater than 150 percent of the penalty amount on November 2, 2015. Mathematically, a maximum increase of 150 percent equals 250 percent of the penalty. See Bipartisan Budget Act of 2015 Section by Section Summary at p. 6 available at <http://docs.house.gov/meetings/RU/RU00/CPRT-114-RU00-D001.pdf>.

TABLE C—CALCULATION OF CATCH-UP ADJUSTMENT

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—\$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1059(b)/ERISA § 209(b).	\$10 per employee for failure to furnish reports (e.g., pension benefit statements) to certain former participants and beneficiaries or maintain records.	1974	4.65436	\$47	\$11	\$28	\$28.
29 U.S.C. 1132(c)(2)/ERISA § 502(c)(2).	Up to \$1,000 per day for each: • Failure or refusal to file annual report (Form 5500) required by ERISA § 104; and. • Failure of a multiemployer plan to certify endangered or critical status under § 305(b)(3)(C) treated as failure to file annual report.	1987	2.06278	2,063	1,100	2,750	2,063.
29 U.S.C. 1132(c)(4)/ERISA § 502(c)(4).	Up to a \$1000 per day for each: • Failure to notify participants under ERISA § 101(j) of certain benefit restrictions and/or limitations arising under Internal Revenue Code section 436;. • Failure to furnish certain multiemployer plan financial and actuarial reports upon request under ERISA § 101(k). • Failure to furnish estimate of withdrawal liability upon request under ERISA § 101(l); and • Failure to furnish automatic contribution arrangement notice under ERISA § 514(e)(3).	1993	1.63238	1,632	1,000	2,500	1,632.
29 U.S.C. 1132(c)(5)/ERISA § 502(c)(5).	Up to \$1,000 per day for each failure of a multiple employer welfare arrangement to file report required by regulations issued under ERISA § 101(g).	1996	1.50245	1,502	1,100	2,750	1,502.
29 U.S.C. 1132(c)(6)/ERISA § 502(c)(6).	Up to \$100 per day for failure to furnish information requested by Secretary of Labor under ERISA § 104(a)(6) but not greater than \$1,000 per request.	1997	1.47177	147 not to exceed 1,472.	110 not to exceed 1,100.	275 not to exceed 2,750.	147 not to exceed 1,472.
29 U.S.C. 1132(c)(7)/ERISA § 502(c)(7).	Up to \$100 per day for each failure to furnish a required blackout notice under section 101(i) of ERISA and of right to divest employer securities under section 101(m)—each statutory recipient a separate violation.	2002	1.31185	131	100	250	131.

TABLE C—CALCULATION OF CATCH-UP ADJUSTMENT—Continued

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—\$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1132(c)(8)/ERISA § 502(c)(8).	Up to \$1,100 per day for failure by a plan sponsor of a multiemployer plan in endangered status to adopt a funding improvement plan or a multiemployer plan in critical status to adopt a rehabilitation plan. Penalty also applies to a plan sponsor of an endangered status plan (other than a seriously endangered plan) that fails to meet its benchmark by the end of the funding improvement period.	2006	1.17858	1,296	1,100	2,750	1,296.
29 U.S.C. 1132(c)(9)(A)/ERISA § 502(c)(9)(A).	Up to \$100 per day for each failure by an employer to inform employees of CHIP coverage opportunities under ERISA § 701(f)(3)(B)(i)(I)—each employee a separate violation.	2009	1.10020	110	100	250	110.
29 U.S.C. 1132(c)(9)(B)/ERISA § 502(c)(9)(B).	Up to \$100 per day for each failure by a plan administrator to timely provide to any State information required to be disclosed under ERISA § 701(f)(3)(B)(ii), regarding coverage coordination—each participant/beneficiary a separate violation.	2009	1.10020	110	100	250	110.
29 U.S.C. 1132(c)(10)/ERISA § 502(c)(10).	\$100 per participant or beneficiary per day during noncompliance period for failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of ERISA §§ 702(a)(1)(F), (b)(3), (c) or (d); or § 701; or § 702(b)(1) with respect to genetic information. See ERISA § 502(c)(10)(B)(i).	2008	1.09819	110	100	250	110.
	Minimum penalty of \$2,500 per participant or beneficiary for de minimis failures not corrected prior to notice from Secretary of Labor. See ERISA § 502(c)(10)(C)(i).	2008	1.09819	2,745	2,500	6,250	2,745.
	Minimum penalty of \$15,000 per participant or beneficiary for failures which are not corrected prior to notice from Secretary of Labor and are not de minimis. See ERISA § 502(c)(10)(C)(ii).	2008	1.09819	16,473	15,000	37,500	16,473.
	\$500,000 cap on unintentional failures. See ERISA § 502(c)(10)(D)(iii)(II).	2008	1.09819	549,095	500,000	1.25 million	549,095.

TABLE C—CALCULATION OF CATCH-UP ADJUSTMENT—Continued

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—\$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1132(c)(12)/ERISA § 502(c)(12).	Up to \$100 per day for failure of CSEC plan sponsor to establish or update a funding restoration plan.	2014	1.00171	100	100	250	100.
29 U.S.C. 1132(m)/ERISA § 502(m).	Up to \$10,000 per distribution prohibited by ERISA § 206(e).	1994	1.59089	15,909	10,000	25,000	15,909.
29 U.S.C. 1185d and 42 U.S.C. 300gg–15/ERISA § 715.	Up to \$1000 per failure to provide Summary of Benefits Coverage under Public Health Services Act section 2715(f), as incorporated in ERISA section § 715 and 29 CFR 2590.715–2715(e).	2010	1.08745	1,087	1,000	2,500	1,087.

c. Structure

Currently, subpart A of part 2575 (Adjustment of Civil Penalties under ERISA Title I) of title 29 of the Code of Federal Regulations contains 7 sections (one general section and a separate section for the six previously adjusted penalties). Due to the large number of title I penalties adjusted for inflation by this IFR, the Department has decided to simplify the structure of subpart A of part 2575. This IFR replaces §§ 2575.100, 2575.209b–1, 2575.502c–2, 2575.502c–5, and 2575.502c–6 with new §§ 2575.1, 2575.2, and 2575.3. Section 2575.1 *In general* contains the implementing language. Section 2575.2 *Catch-up adjustments to civil monetary penalties* sets out the inflation adjustments for each ERISA penalty from establishment of the penalty amount through August 1, 2016. Section 2575.3 *Subsequent adjustments to civil monetary penalties* addresses post-2016 non-regulatory inflation adjustments.

Also, as a result of the amendments made to the Prior Inflation Adjustment Act by the Inflation Adjustment Act, the IFR also makes minor technical changes to §§ 2560.502c–2, 2560.502c–4, 2560.502c–5, 2560.502c–6, 2560.502c–7, and 2560.502c–8 of 29 CFR part 2560 and § 2590.715–2715(e) of 29 CFR part 2950.

G. Mine Safety and Health Administration (30 CFR Part 100)

1. General

This section G of the preamble addresses the civil monetary penalties administered by Mine Safety and Health Administration (MSHA) to enforce provisions of the Federal Mine Safety &

Health Act of 1977 (Mine Act) (Pub. L. 91–173), as amended. Paragraphs 2(a) through (c) explain revisions to each of the civil penalties administered and enforced by MSHA.

2. Specific Penalty Adjustments

In accordance with the Inflation Adjustment Act, MSHA is adjusting its penalty amounts in §§ 100.3, 100.4, and 100.5 by calculating the catch-up adjustments for these penalties from the date of the last statute or regulation (other than the Prior Inflation Adjustment Act) that set these penalties. All MSHA penalties were last set in 2007. *See* 72 FR 13592 (Mar. 22, 2007). Subsequently (after 2007), some but not all of MSHA’s penalties also were adjusted for inflation. This rule uses the 2007 final rule as the base year in calculating all of MSHA’s penalty inflation adjustments, rounded to the nearest dollar. While this has resulted in different relative impacts on particular penalty amounts depending on whether any inflation adjustments occurred for that penalty since 2007, the net effect of these adjustments is to increase MSHA’s penalties.

a. Section 100.3—Determination of Penalty Amount; Regular Assessment

Regularly assessed penalties are established by a penalty conversion table in part 100 that sets penalties based on the number of points a citation has been assigned. MSHA assigns points using a number of factors described in part 100, including the negligence of the operator and the gravity of the violation, among other criteria. Currently, a range of points—from 60 or fewer to 144 or more—is available; more points result in

higher penalties. Penalties can range anywhere at or between the minimum penalty and the maximum penalty, based on the number of points assigned. Thus, the effect of MSHA’s penalty conversion table as a whole is a function of both the amount of the minimum and maximum penalties and the rate of the progression between those two outer points. In order to fully assess how to adjust for inflation as prescribed by the statute, it is necessary to look at the interaction of all three of these factors—minimum penalty, maximum penalty, and the rate of progression between the two. As described below, we have adjusted all three elements. The result is an upward adjustment for inflation equal to 13.6% for penalties assessed overall pursuant to the penalty table (calculated using MSHA’s 2015 penalty data).

Existing § 100.3(a)(1) provides that an operator of any mine in which a violation of a mandatory health or safety standard occurs or who violates any other provisions of the Mine Act shall be regularly assessed a civil penalty of not more than \$70,000. To calculate the adjustment of this penalty under the Inflation Adjustment Act, MSHA multiplied \$60,000, the maximum civil penalty last established by regulation (other than the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which results in a penalty amount of \$68,300. The inflation-adjusted amount of \$8,300 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$70,000 penalty in effect as of November 2, 2015, which is \$105,000. Therefore, the maximum regular

assessment for an operator of any mine in which a violation of a mandatory health or safety standard occurs or who violates any other provisions of the Mine Act is \$68,300, a decrease of \$1,700 from the existing penalty amount of \$70,000. The new maximum penalty of \$68,300 is also the maximum amount available under MSHA's penalty conversion table in § 100.3(g).

Section 100.3(g) provides the penalty conversion table used to convert total penalty points to a dollar amount. As discussed above, the points are assigned to a violation based on the criteria listed in 30 CFR part 100. The existing penalty conversion table assigns dollar amounts to penalty points that range from 60 or fewer to 144 or more. For this final rule, MSHA is using the penalty point conversion table last established by regulation (other than the Prior Inflation Adjustment Act) in 2007 (72 FR 13592)—both for purposes of determining minimum and maximum penalties and the point range between those two points. The penalty point range in the 2007 regulation used a penalty point range from 60 points or fewer to 140 points or more. For this reason, MSHA is changing the existing penalty point maximum of 144 points or more back to the maximum of 140 points or more. As described below, the result is an upward adjustment for inflation equal to 13.6 percent for penalties assessed overall (using 2015 penalty data) pursuant to the penalty conversion table.

To adjust the existing minimum penalty for inflation, MSHA multiplied \$112, the minimum civil penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$127. The \$15 penalty increase is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$112 penalty in effect as of November 2, 2015, which is \$168. Therefore, the minimum penalty in the penalty conversion table is \$127.

The inflation adjusted penalty conversion table in § 100.3(g) maintains the minimum penalty for 60 points or fewer at the new inflation-adjusted amount of \$127. For each additional point above 60 up to 140, the existing penalty conversion table increased the dollar penalty by the same 2007 inflation adjustment factor of 1.13833 for each point. After calculating all values, MSHA rounded all values to the nearest dollar. Although the maximum penalty decreased from \$70,000 to \$68,300, applying the new table to MSHA's 2015 assessment data results in

a 13.6 percent increase (just slightly less than the 13.8 percent inflation adjustment for 2007).

b. Section 100.4—Unwarrantable Failure and Immediate Notification

Section 100.4(a) provides the minimum penalty for citations or orders issued under § 104(d)(1) of the Mine Act at \$2,000. To adjust the existing minimum penalty for inflation, MSHA multiplied \$2,000, the minimum penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$2,277. The penalty increase of \$277 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$2,000 penalty in effect as of November 2, 2015, which is \$3,000. Therefore, the minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act is \$2,277.

Section 100.4(b) states that the minimum penalty for any order issued under section 104(d)(2) of the Mine Act is \$4,000. To adjust the existing minimum penalty for inflation, MSHA multiplied \$4,000, the minimum penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$4,553. The penalty increase of \$553 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$4,000 penalty in effect as of November 2, 2015, which is \$6,000. Therefore, the minimum penalty for any citation or order issued under section 104(d)(2) of the Mine Act is \$4,553.

Section 100.4(c) states that the penalty for failure to provide timely notification of a death or entrapment of a miner or miners at a mine to the Secretary of Labor under section 103(j) of the Mine Act, as amended, will not be less than a penalty of \$5,000 and not more than a penalty of \$65,000. To adjust the existing minimum penalty, MSHA multiplied \$5,000, the minimum civil penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$5,692. The penalty increase of \$692 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$5,000 penalty in effect as of November 2, 2015, which is \$7,500. Therefore, the minimum penalty for failure to provide timely notification to the Secretary

under section 103(j) of the Mine Act is \$5,692. To adjust the existing maximum penalty, MSHA multiplied \$60,000, the maximum penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$68,300. The penalty increase of \$8,300 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$65,000 penalty in effect as of November 2, 2015, which is \$97,500. Therefore, the maximum penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act is \$68,300.

c. Section 100.5—Determination of Penalty Amount; Special Assessment

Section 100.5(c) addresses penalties that may be assessed daily to an operator who fails to correct a violation for which a citation or order has been issued under Section 104(a) of the Mine Act. The existing maximum daily penalty assessment is \$7,500.

To adjust the penalty for inflation, MSHA multiplied \$6,500, the penalty amount last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$7,399. The inflation-adjusted amount of \$899 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$7,500 penalty in effect as of November 2, 2015, which is \$11,250. Therefore, the daily penalty assessed an operator who fails to correct a violation for which a citation or order has been issued under Section sec. 104(a) of the Mine Act is \$7,399, a decrease of \$101 from the existing penalty amount of \$7,500.

Section 100.5(d) addresses penalties for miners who violate mandatory safety standards relating to smoking and smoking materials underground. The existing maximum smoking penalty is \$375. To adjust the penalty for inflation, MSHA multiplied the penalty \$275, the maximum smoking penalty amount last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$313. The inflation-adjusted amount of \$38 is less than the statutory catch-up adjustment cap of a 150 percent increase of the \$375 penalty in effect as of November 2, 2015, which is \$563. Therefore, the penalty assessed for a miner who violates mandatory safety standards relating to smoking and smoking materials underground is \$313,

a decrease of \$62 from the existing penalty amount of \$375.

Section 100.5(e) provides a maximum penalty for violations that are deemed to be flagrant under 110(b)(2) of the Mine Act. The existing maximum penalty is \$242,000. To adjust the penalty for inflation, MSHA multiplied \$220,000, the penalty last established by regulation (other than under the Prior Inflation Adjustment Act) in 2007 (72 FR 13592), by the inflation adjustment factor for 2007 of 1.13833, which resulted in a penalty of \$250,433. The penalty increase of \$8,433 is less than the statutory catch-up adjustment increase cap of a 150 percent increase of the \$242,000 penalty in effect as of November 2, 2015, which is \$363,000. Therefore, the maximum penalty for violations that are deemed flagrant under sec. 110(b) of the Mine Act is \$250,433.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule does not require any collection of information.

V. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a “significant regulatory action” is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. The IFR’s increases in the maximum civil money penalties that agencies are authorized to assess for violations of laws they administer are required by the statutorily-mandated provisions of the Inflation Adjustment Act, which was enacted by Congress as part of the Bipartisan Budget Act of 2015. This IFR is a “significant” regulatory action because the Department’s analysis shows that it could potentially have an annual effect on the economy of more than \$100 million.

The Department considered two potential effects of the increased penalties mandated by the Inflation

Adjustment Act: (1) Increased transfers from employers and others who violate the law (and therefore pay penalties) to the government; and (2) the benefits to workers, retirees, and responsible employers and others of increased penalties that will encourage greater compliance with the laws that the Department enforces. Each of these effects is discussed in turn.

Transfers to Government

The Department estimated the increased transfers from employers and others who violate the law to the government by conducting a provision-by-provision analysis of each of the penalties affected by the Inflation Adjustment Act. The Department considered the total dollar amount of penalties collected under each affected penalty over the immediately preceding three complete fiscal years (2013, 2014, and 2015) to calculate the average total penalties collected under each statute.¹² Then the Department projected how the amount collected under each statute would increase if it did so in proportion to the percentage increase of the maximum penalty for that statute.¹³ The result—approximately \$140 million in additional transfers from the regulated community to the government each year—is enumerated by agency in Table D.

TABLE D—PROJECTED PENALTIES
(Inflation Adjustment Act: Total penalties by agency, 3-year average (2013–2015))

Agency	Dollar Amount Collected (\$FY2015)		
	Total (current penalties)	Total (projected penalties)	Numeric change
EBSA	\$17,667,363	\$33,134,336	\$15,466,973
MSHA	73,112,904	82,812,155	9,699,251
OSHA (federal)	141,969,042	252,927,499	110,958,457
OWCP	19,674	45,470	25,797
WHD/ETA/OSEC	6,894,835	10,541,217	3,646,383
Total	239,663,817	379,460,677	139,796,860

The Department notes that this amount could be an overestimate of transfers given that its collections are likely to be lower than projected under

the new penalties established by the Inflation Adjustment Act. First, it does not account for a key factor underpinning long-established

deterrence principles: That rational actors are *less likely* to commit violations when faced with higher penalties.¹⁴ It is therefore conceivable

¹²The total penalties collected in fiscal years 2013 and 2014 were adjusted for inflation using the CPI-U to put them into fiscal year 2015 dollars previous to the calculation of three-year collection averages.

¹³Exceptions were made to this method with respect to three provisions of the Mine Act. To calculate projected total penalty collections under sections 104(d)(1) and 104(d)(2), the three-year averages of penalties collected under each provision between fiscal years 2013 and 2015 were multiplied

by the percentage increases in the minimum required penalties for each statute. To calculate projected total penalties collected using MSHA’s penalty conversion table, MSHA used the detailed assessment data from fiscal years 2013, 2014, and 2015 to estimate total assessed dollar values for each year using both the existing and new conversion tables. The total dollar values produced using the new inflation-adjusted conversion table were then compared to the dollar values produced using the existing conversion table. The resulting annual percent changes for fiscal years 2013, 2014,

and 2015 were 13.5 percent, 13.5 percent, and 13.6 percent respectively. These annual percentages were then multiplied by the annual dollar collection totals for each fiscal year to obtain projected collections by fiscal year, and a three-year average was then taken to produce a single projected collection total.

¹⁴ See generally Gary S. Becker, *Essays in the Economics of Crime and Punishment*, Ch. 1 (1974), available at <http://www.nber.org/chapters/c3625.pdf>. These concepts are also reflected in the

that the increase in penalties collected would not be proportional to the increase in penalties that might be assessed by an agency, but would instead be less.¹⁵ In addition, this estimate also assumes that the Department's collections will continue at approximately the same rate each year despite increased penalties. Together, these factors suggest that the amount of the transfers from the regulated community to the government is likely to be lower than the \$140 million projected above.

OSHA's penalty increases under the Inflation Adjustment Act will necessitate an increase to the maximum and minimum penalty amounts required by states that administer their own occupational safety and health programs as well. Section 18 of the OSH Act (29

U.S.C. 667) requires states with OSHA-approved State Plans covering private-sector and state and local government employees to have standards and an enforcement program that are at least as effective as Federal OSHA's standards and enforcement program. Twenty-two (22) States and U.S. territories have State Plans that cover private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The existing regulation at 29 CFR 1902.4(c)(2)(xi) provides that in order to satisfy this requirement of effectiveness, State Plans must have effective

sanctions, such as those prescribed in the OSH Act. Similarly, 29 CFR 1902.37(b)(12) requires State Plans with final approval to propose penalties in a manner at least as effective as under the federal program. This IFR amends 29 CFR 1902.4(c)(2)(xi) to clarify that State Plans must provide sanctions as effective as those set forth in the OSH Act and in 29 CFR 1903.15(d).

OSHA will require State Plans to increase their penalties to reflect the federal penalties increases at the state levels in order to maintain this "at least as effective" status. If every State Plan state increases its own penalties in line with the federal increases, using the same methodology outlined above, the additional transfer from employers to OSHA State Plans would be \$57.1 million, as enumerated in Table E.

TABLE E—PROJECTED PENALTIES
[Inflation Adjustment Act: OSHA state plans, 3-Year average (2013–2015)]

	Dollar amount collected (\$FY2015)		
	Total (current penalties)	Total (projected penalties)	Numeric change
OSHA State Plans	\$73,121,821	\$130,271,603	\$57,149,782

Benefits to Workers, Retirees, and Responsible Employers

Meanwhile, the Inflation Adjustment Act's penalty increase will have significant benefits for workers, retirees, and responsible employers and others in the regulated community. While most employers play by the rules, there are too many cases where workers are cheated out of their hard-earned wages or retirement benefits or forced to endure an unsafe workplace. By deterring violations and promoting compliance, more workers and retirees will benefit from the core employment law protections that the Department administers and enforces. Furthermore, responsible employers and others who remain in compliance with the

Department's laws will face less competition from the minority of employers who make a calculated decision to save money by eschewing compliance with these laws.¹⁶ Those who follow the law will essentially benefit from a more level playing field when competing with those who do not. The Department has been unable to quantify these significant benefits.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5

U.S.C. 553(b), and that are likely to have a significant economic impact on a substantial number of small entities. This IFR is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue an interim final rule. Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this IFR. Accordingly, the Department is not required to either certify that the IFR would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Inflation Adjustment Act. 28 U.S.C. 2461 Note, Sec. 2(a)(1) ("[T]he power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations[.]"); 2(b)(2) ("The purpose of this Act is to establish a mechanism that shall . . . maintain the deterrent effect of civil monetary penalties and promote compliance with the law."); S. 535: Hearing before Subcomm. Legis & Nat'l Sec. of the H. Comm. Gov't Ops., 101st Cong. 3 (1990) (hereinafter 1990 Hearing) (statement of Rep. Conyers) ("At the heart . . . of regulatory statutes . . . are the monetary fines intended to both penalize and deter practices prohibited by these laws."); *Id.* at 70 (statement of HHS Inspector Gen. Kusserow) ("We have found that civil monetary penalties are a very effective enforcement tool [and] have also seen them become

a very good deterrent against fraud."). Research suggests that the same concepts apply in labor law violations as well. *See, e.g.,* Orley Ashenfelter & Robert S. Smith, Compliance with the Minimum Wage Law, 87 *Journal of Political Economy* 333 (1979), available at http://www.jstor.org/stable/1832090?seq=1#page_scan_tab_contents.

¹⁵ In addition, it is important to note that the IFR does not revoke existing provisions of the laws above that provide the Department with discretion in determining the appropriate civil penalty amounts below any particular maximum penalty. Nor does the IFR amend any requirements in these laws that the Department consider mitigating factors in making such determinations, such as the severity of the violation, the number of workers affected by the violation, the entity's compliance history, or the size of the entity.

¹⁶ Entities that violate the basic labor protections described above such that they are subject to civil penalties have often benefitted from their non-compliance with such requirements over a length of time before being investigated, assessed and required to pay penalties for their illegal activities. As noted above, the rule only adjusts the authorized levels of civil money penalties to account for inflation over time. Of course, to the extent that civil penalties increase, there will be increased revenues to the government from entities that have been found to have violated the law. *See* 1990 Hearing at 15 (discussing the importance of the government fully understanding how many civil monetary penalties are assessed and collected and discussing the benefit to taxpayers of increased revenue for government).

VII. Other Regulatory Considerations

A. *The Unfunded Mandates Reform Act of 1995*

The Department estimates that the IFR may result in transfers of up to \$140 million per year, and acknowledges that this IFR may yield effects that make it subject to UMRA requirements. Therefore, the Department carried out the requisite cost-benefit analysis in the section discussing Executive Orders 12866 and 13563 above.

B. *Executive Order 13132: Federalism*

As described above, Section 18 of the OSH Act (29 U.S.C. 667) requires OSHA-approved State Plans to have standards and an enforcement program that are at least as effective as federal OSHA's standards and enforcement program. The existing regulation at 29 CFR 1902.4(c)(2)(xi) provides that in order to satisfy this requirement of effectiveness, State Plans must have effective sanctions, such as those prescribed in the OSH Act. Similarly, 29 CFR 1902.37(b)(12) requires State Plans with final approval to propose penalties in a manner at least as effective as under the federal program. This IFR amends 29 CFR 1902.4(c)(2)(xi) to clarify that State Plans must provide sanctions as effective as those set forth in the OSH Act and in 29 CFR 1903.15(d).

In accordance with Part 1953, State Plans are required to adopt penalty changes that are at least as effective as federal OSHA, within six months after publication of the Department's IFR amending OSHA's penalties. Thereafter, OSHA penalties will be increased by the cost-of-living adjustment for every subsequent year by January 15th. State Plans will also be required to increase their penalties regularly in the future to maintain at least as effective penalty levels.

State Plans are not required to impose monetary penalties on state and local government employers. See § 1956.11(c)(2)(x). Five (5) states and one territory have State Plans that cover only state and local government employees: Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands. Therefore, the requirements to increase the penalty levels do not apply to these State Plans. Twenty-one (21) states and one U.S. territory have State Plans that cover both private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

These states must increase their penalties for private-sector employers.

Other than as listed above, this IFR does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

C. *Executive Order 13175: Indian Tribal Governments*

This IFR does not have "tribal implications" because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

D. *The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families*

This IFR will have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

E. *Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This IFR will have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. *Environmental Impact Assessment*

A review of this Final Rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.*; and the Departmental NEPA procedures, 29 CFR part 11, indicates that the Final Rule will not have a significant impact on the quality of the human environment. As a result, there is no corresponding environmental

assessment or an environmental impact statement.

G. *Executive Order 13211: Energy Supply*

This IFR has been reviewed for its impact on the supply, distribution, and use of energy because it applies, in part, to the coal mining and uranium industries. MSHA has concluded that the adjustment of civil monetary penalties to keep pace with inflation and thus maintain the incentive for operators to maintain safe and healthful workplaces is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This IFR has not been identified to have other impacts on energy supply. Accordingly, Executive Order 13211 requires no further Agency action or analysis.

H. *Executive Order 12630: Constitutionally Protected Property Rights*

This IFR will not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

I. *Executive Order 12988: Civil Justice Reform Analysis*

This IFR was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This IFR was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. The Department has determined that this IFR meets the applicable standards provided in section 3 of Executive Order 12988.

List of Subjects

20 CFR Part 655

Immigration, Penalties, Labor.

20 CFR Part 702

Administrative practice and procedure, Longshore and harbor workers, Penalties, Reporting and recordkeeping requirements, Workers' compensation.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Coal miners, Penalties, Reporting and recordkeeping requirements.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Coal miners, Mines, Penalties.

29 CFR Part 5

Administrative practice and procedure, Construction industry, Employee benefit plans, Government contracts, Law enforcement, Minimum wages, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 530

Administrative practice and procedure, Clothing, Homeworkers, Indians—arts and crafts, Penalties, Reporting and recordkeeping requirements, Surety bonds, Watches and jewelry.

29 CFR Part 570

Administrative practice and procedure, Agriculture, Child labor, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 578

Penalties, Wages.

29 CFR Part 579

Child labor, Penalties.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.

29 CFR Parts 1902 and 1903

Intergovernmental relations, Law enforcement, Occupational Safety and Health, Penalties.

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Penalties, Pensions, Reporting and recordkeeping

29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Health care, Penalties, Pensions

29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Penalties, Pensions, Reporting and recordkeeping

30 CFR Part 100

Mine safety and health, Penalties.

41 CFR Part 50–201

Child labor, Government procurement, Minimum wages, Occupational safety and health, Reporting and recordkeeping requirements.

Department of Labor

Employment and Training Administration

For the reasons stated in the preamble, 20 CFR part 655 is amended as follows:

Title 20—Employees’ Benefits

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. Revise the general authority citation for part 655 to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 et seq.; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i). Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 et seq.; and 8 CFR 214.2(h)(4)(i). Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 et seq.; and 8 CFR 214.2(h)(4)(i); and 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), Pub. L. 114–74 at § 701. Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 et seq.; and 28 U.S.C. 2461 note, Pub. L. 114–74 at § 701. Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 et seq.; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note). Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 et

seq.; and 28 U.S.C. 2461 note, Pub. L. 114–74 at § 701. Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 et seq.; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681; and 28 U.S.C. 2461 note, Pub. L. 114–74 at § 701. Subparts J and K issued under 29 U.S.C. 49 et seq.; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note). Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 et seq.

■ 2. Amend § 655.620 by revising paragraph (a) to read as follows:

§ 655.620 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed \$8,908 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

* * * * *

■ 3. Amend § 655.801 by revising paragraph (b) to read as follows:

§ 655.801 What protection do employees have from retaliation?

* * * * *

(b) It shall be a violation of this section for any employer to engage in the conduct described in paragraph (a) of this section. Such conduct shall be subject to the penalties prescribed by sections 212(n)(2)(C)(ii) or (t)(3)(C)(ii) of the INA and § 655.810(b)(2), i.e., a fine of up to \$7,251, disqualification from filing petitions under section 204 or section 214(c) of the INA for at least two years, and such further administrative remedies as the Administrator considers appropriate.

* * * * *

■ 4. Amend § 655.810 by revising paragraphs (b)(1), (2) and (3) introductory text, to read as follows:

§ 655.810 What remedies may be ordered if violations are found?

* * * * *

(b) * * *

(1) An amount not to exceed \$1,782 per violation for:

* * * * *

(2) An amount not to exceed \$7,251 per violation for:

* * * * *

(3) An amount not to exceed \$50,758 per violation where an employer (whether or not the employer is an H–1B-dependent employer or willful violator) displaced a U.S. worker employed by the employer in the period beginning 90 days before and ending 90 days after the filing of an H–1B petition

in conjunction with any of the following violations:

* * * * *

Department of Labor

Office of Workers' Compensation Programs

For the reasons stated in the preamble, 20 CFR parts 702, 725, and 726 are amended as follows:

Title 20—Employees' Benefits

PART 702—ADMINISTRATION AND PROCEDURE

■ 5. The authority citation for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.*; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec.701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 6. Revise § 702.204 to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed \$22,587 for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after August 1, 2016. The district director has the authority and responsibility for assessing a civil penalty under this section.

■ 7. Revise § 702.236 to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of \$275 for any violation for which penalties are assessed after August 1, 2016. The district director has the authority and responsibility for assessing a civil penalty under this section.

■ 8. In § 702.271, revise paragraph (a)(2) to read as follows:

§ 702.271 Discrimination; against employees who bring proceedings, prohibition and penalty.

(a)(1) * * *

(2) Any employer who violates this section, and has penalties assessed for such violation after August 1, 2016, shall be liable for a penalty of not less

than \$2,259 or more than \$11,293 to be paid (by the employer alone, and not by a carrier) to the district director for deposit in the special fund described in section 44 of the Act, 33 U.S.C. 944; and shall restore the employee to his or her employment along with all wages lost due to the discrimination unless the employee has ceased to be qualified to perform the duties of employment.

* * * * *

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 9. The authority citation for part 725 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 10. In § 725.621, revise paragraph (d) to read as follows:

§ 725.621 Reports.

* * * * *

(d) Any employer who fails or refuses to file any report required of such employer under this section, and has penalties assessed for such failure or refusal after August 1, 2016, shall be subject to a civil penalty not to exceed \$1,375 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in subpart D of part 726 of this subchapter, as appropriate.

* * * * *

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 11. The authority citation for part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 33 U.S.C. 901 *et seq.*, 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.*; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 12. Revise § 726.300 to read as follows.

§ 726.300 Purpose and scope.

Any operator which is required to secure the payment of benefits under section 423 of the Act and § 726.4 and which fails to secure such benefits, shall be subject to a civil penalty of not more than \$1,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for each day

during which such failure occurs. If the operator is a corporation, the president, secretary, and treasurer of the operator shall also be severally liable for the penalty based on the operator's failure to secure the payment of benefits. This subpart defines those terms necessary for administration of the civil money penalty provisions, describes the criteria for determining the amount of penalty to be assessed, and sets forth applicable procedures for the assessment and contest of penalties.

■ 13. In § 726.302, revise paragraphs (c)(2)(i), (4), and (5) and add (c)(6) to read as follows:

§ 726.302 Determination of penalty.

* * * * *

(c)(1) * * *

(2)(i) The daily base penalty amount shall be determined based on the number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on each day of the period defined by this section.

For penalties assessed after August 1, 2016, the daily base penalty amount shall be computed as follows:

Employees	Penalty (per day)
Less than 25	\$134
25–50	268
51–100	402
More than 100	535

* * * * *

(4) Commencing with the 11th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, for penalties assessed after August 1, 2016, the daily base penalty amounts set forth in paragraph (c)(2)(i) shall be increased by \$134.

(5) In any case in which the operator, or any of its principals, or an entity in which the operator's president, secretary, or treasurer were employed, has been the subject of a previous penalty assessment under this part, for penalties assessed after August 1, 2016, the daily base penalty amounts shall be increased by \$402.

(6) The maximum daily base penalty amount applicable to any violation of § 726.4 for which penalties are assessed after August 1, 2016, shall be \$2,750.

* * * * *

Department of Labor

Office of the Secretary of Labor

For the reasons stated in the preamble, 29 CFR part 5 is amended as follows:

Title 29—Labor

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

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

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 15. Amend § 5.5 by revising the last sentence of paragraph (b)(2) to read as follows:

§ 5.5 Contract provisions and related matters.

* * * * *

(b) * * *

(2) * * * Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

* * * * *

■ 16. Amend § 5.8 by revising the second sentence in paragraph (a) to read as follows:

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) * * * In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$25 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages.

* * * * *

Department of Labor

Wage and Hour Division

For the reasons stated in the preamble, 29 CFR parts 500, 501, 530, 570, 578, 579, 801, and 825 are amended as follows:

Title 29—Labor

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 17. The authority citation for part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

■ 18. Amend § 500.1 by revising the second sentence in paragraph (e) to read as follows:

§ 500.1 Purpose and scope.

* * * * *

(e) * * * As provided in the Act, the Secretary is empowered, among other things, to impose an assessment and to collect a civil money penalty of not more than \$2,355 for each violation, to seek a temporary or permanent restraining order in a U.S. District Court, and to seek the imposition of criminal penalties on persons who willfully and knowingly violate the Act or any regulation under the Act.* * *

* * * * *

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 19. Revise the authority citation for part 501 to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 20. Amend § 501.19 by revising paragraphs (c) introductory text, (c)(1), (2), (4), (d), (e), and (f) to read as follows:

§ 501.19 Civil money penalty assessment.

* * * * *

(c) A civil money penalty for each violation of the work contract or a requirement of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part will not exceed \$1,631 per violation, with the following exceptions:

(1) A civil money penalty for each willful violation of the work contract, or

of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, or for each act of discrimination prohibited by § 501.4 shall not exceed \$5,491;

(2) A civil money penalty for a violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker shall not exceed \$54,373 per worker;

* * * * *

(4) A civil money penalty for a repeat or willful violation of a housing or transportation safety and health provision of the work contract, or any obligation under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, that proximately causes the death or serious injury of any worker, shall not exceed \$108,745 per worker.

(d) A civil money penalty for failure to cooperate with a WHD investigation shall not exceed \$5,491 per investigation.

(e) A civil money penalty for laying off or displacing any U.S. worker employed in work or activities that are encompassed by the approved Application for Temporary Employment Certification for H–2A workers in the area of intended employment either within 60 days preceding the date of need or during the validity period of the job order, including any approved extension thereof, other than for a lawful, job-related reason, shall not exceed \$16,312 per violation per worker.

(f) A civil money penalty for improperly rejecting a U.S. worker who is an applicant for employment, in violation of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, shall not exceed \$16,312 per violation per worker.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 21. The authority citation for part 503 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 22. Revise § 530.302 to read as follows:

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed \$989 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this

part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits

set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	\$20–198	\$198–396	\$396–989
Monetary violations	20–198	198–396	
Employment of homeworkers without a certificate		198–396	396–989
Other violations of statutes, regulations or employer assurances	20–198	198–396	396–989

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

■ 23. The authority citation for Subpart G of part 570 is revised to read as follows:

Authority: 52 Stat. 1060–1069, as amended; 29 U.S.C. 201–219; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701.

■ 24. Amend § 570.140 by revising paragraphs (b)(1) and (2) to read as follows:

§ 570.140 General.

* * * * *

(b) * * *

(1) \$12,080 for each employee who was the subject of such a violation; or

(2) \$54,910 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is repeated or willful.

* * * * *

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 25. The authority citation for part 578 is revised to read as follows:

Authority: Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29 (29 U.S.C. 216(e)), Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, 1321–373, and Pub. L. 114–74, 129 Stat 584.

■ 26. Amend § 578.1 by revising the first two sentences to read as follows:

§ 578.1 What does this part cover?

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to provide that any person who repeatedly or willfully violates the minimum wage (section 6)

or overtime provisions (section 7) of the Act shall be subject to a civil money penalty not to exceed \$1,000 for each such violation. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74, section 701), requires that inflationary adjustments be annually made in these civil money penalties according to a specified cost-of-living formula. * * *

■ 27. Amend § 578.3 by revising paragraph (a) to read as follows:

§ 578.3 What types of violations may result in a penalty being assessed?

(a) A penalty of up to \$1,894 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalty will be determined by applying the criteria in § 578.4.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 28. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203(l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor’s Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–7, 129 Stat 584.

■ 29. Amend § 579.1 by revising paragraphs (a)(1)(i)(A), (B), (2) and (b) to read as follows:

§ 579.1 Purpose and scope.

(a) * * *
(1)(i) * * *

(A) \$12,080 for each employee who was the subject of such a violation; or

(B) \$54,910 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

* * * * *

(2) Any person who repeatedly or willfully violates section 206 or 207 of the FLSA, relating to wages, shall be subject to a civil penalty not to exceed \$1,894 for each such violation.

* * * * *

(b) The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Pub. L. 114–74, section 701), requires that Federal agencies annually adjust their civil money penalties for inflation according to a specified cost-of-living formula.

* * * * *

■ 30. Amend § 579.5 by revising paragraph (a) to read as follows:

§ 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty for each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violations as provided in paragraphs (b) through (d) of this section.

* * * * *

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 31. The authority citation for part 801 is revised to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 32. Amend § 801.42 by revising paragraph (a) introductory text to read as follows:

§ 801.42 Civil money penalties—assessment.

(a) A civil money penalty in an amount not to exceed \$19,787 for any violation may be assessed against any employer for:

* * * * *

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 33. The authority citation for part 825 is revised to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 34. Amend § 825.300 by revising the last sentence in paragraph (a)(1) to read as follows:

§ 825.300 Employer notice requirements.

(a) * * *
(1) * * * An employer that willfully violates the posting requirement may be assessed a civil money penalty by the Wage and Hour Division not to exceed \$163 for each separate offense.

* * * * *

Department of Labor

Public Contracts

For the reasons stated in the preamble 41 CFR part 50–201 is amended as follows:

Title 41—Public Contracts and Property Management

PART 50–201—GENERAL REGULATIONS

■ 35. The authority citation for part 50–201 is revised to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40; 108 Stat. 7201; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 36. Amend § 50–201.3 by revising the first sentence of paragraph (e) to read as follows:

§ 50–201.3 Insertion of stipulations.

* * * * *

(e) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$25 per day for each person under 16 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. * * *

* * * * *

Department of Labor

Occupational Safety and Health Administration

For the reasons set out in the preamble, 29 CFR parts 1902 and 1903 are amended as follows:

Title 29—Labor

PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

■ 37. The authority citation for part 1902 is revised to read as follows:

Authority: Secs. 8 and 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor’s Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Subpart B—Criteria for State Plans

■ 38. Amend § 1902.4 by revising paragraph (c)(2)(xi) to read as follows:

§ 1902.4 Indices of effectiveness.

* * * * *

(c) * * *

(2) * * *

(xi) Provides effective sanctions against employers who violate State standards and orders, such as those set forth in the Act, and in 29 CFR 1903.15(d).

* * * * *

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 39. The authority citation for part 1903 is revised to read as follows:

Authority: Secs. 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor’s Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 40. Amend § 1903.2 by revising paragraph (d) to read as follows:

§ 1903.2 Posting of notice; availability of the Act, regulations and applicable standards.

* * * * *

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of § 1903.15(d).

■ 41. Amend § 1903.6 by revising paragraph (b) to read as follows:

§ 1903.6 Advance notice of inspections.

* * * * *

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Area Director, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Safety and Health Officer without such authorization if the Area Director is not immediately available. When advance notice is given, it shall be the employer’s responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See § 1903.8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer promptly to inform such representative of the inspection, may be subject to citation and penalty in accordance with

§ 1903.15(d)(4). Advance notice in any of the situations described in paragraph (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

* * * * *

■ 42. Amend § 1903.15 by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 1903.15 Proposed penalties.

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of the proposed penalty in accordance with paragraph (d) of this section, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Area Director in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act and paragraph (d) of this section.

* * * * *

(d) *Adjusted civil monetary penalties.* The adjusted civil penalties for penalties proposed on or after August 1, 2016 are as follows:

(1) *Willful violation.* The penalty per willful violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not be less than \$8,908 and shall not exceed \$124,709.

(2) *Repeated violation.* The penalty per repeated violation under section 17(a) of the Act, 29 U.S.C. 666(a), shall not exceed \$124,709.

(3) *Serious violation.* The penalty for a serious violation under section 17(b) of the Act, 29 U.S.C. 666(b), shall not exceed \$12,471.

(4) *Other-than-serious violation.* The penalty for an other-than-serious violation under section 17(c) of the Act, 29 U.S.C. 666(c), shall not exceed \$12,471.

(5) *Failure to correct violation.* The penalty for a failure to correct a violation under section 17(d) of the Act, 29 U.S.C. 666(d), shall not exceed \$12,471 per day.

(6) *Posting requirement violation.* The penalty for a posting requirement violation under section 17(i) of the Act, 29 U.S.C. 666(i), shall not exceed \$12,471.

■ 43. Amend § 1903.16 by revising paragraph (d) to read as follows:

§ 1903.16 Posting of citations.

* * * * *

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with § 1903.15(d).

■ 44. Amend § 1903.18 by revising paragraph (a) to read as follows:

§ 1903.18 Failure to correct a violation for which a citation has been issued.

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Area Director shall, if appropriate, consult with the Regional Solicitor, and he shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of such failure and of the additional penalty proposed under § 1903.15(d)(5) by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Review Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

* * * * *

Department of Labor

Employee Benefits Security Administration

For the reasons stated in the preamble, 29 CFR parts 2560, 2575, 2590 are amended as follows:

Title 29—Labor

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 45. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1002, 1132, 1133, 1134, 1135, and Secretary of Labor's Order 1-2011, 77 FR 1088 (January 9, 2012). Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104-134, 110 Stat. 1321-373, and section 701 of Pub. L. 114-74, 129 Stat. 584.

§ 2560.502c-2 [Amended]

■ 46. Amend § 2560.502c-2(b)(1) by removing the parenthetical phrase “(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)” and adding in its place “(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).”

§ 2560-502c-4 [Amended]

■ 47. Amend § 2560.502c-4(b)(1) by removing the parenthetical phrase “(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)” and adding in its place “(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).”

■ 48. Amend § 2560.502c-5 by revising the second sentence of paragraph (b)(1) to read as follows:

§ 2560.502c-5 Civil penalties under section 502c-5.

* * * * *

(b) * * *

(1) * * * However, the amount assessed under section 502(c)(5) or the Act shall not exceed \$1,000 a day (adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to file the report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g) of the Act and 29 CFR 2520.101-2, as determined by the Secretary, is filed.

* * * * *

§ 2560.502c-6 [Amended]

■ 49. Amend § 2560.502c-6(b)(1) by removing the parenthetical phrase “(or such other maximum amounts as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)” and adding in its place “(such amounts to be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).”

§ 2560.502c-7 [Amended]

■ 50. Amend § 2560.502c-7(b)(1) by removing the parenthetical phrase “(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)” and adding in its place “(adjusted for

inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).”

§ 2560.502c-8 [Amended]

■ 51. Amend § 2560.502c-8(b)(1) by removing the parenthetical phrase “(or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended)” and adding in its place “(adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended).”

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

■ 52. The authority citation for subpart A of 29 CFR part 2575 is revised to read as follows:

Authority: Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104-134, 110 Stat. 1321-373, and section 701 of Pub. L. 114-74, 129 Stat. 584; 29 U.S.C 1059(b), 1132(c), 1135 and 1185d; and Secretary of Labor’s Order 1-2011, 77 FR 1088 (January 9, 2012).

■ 53. Add §§ 2575.1, 2575.2 and 2575.3 to read as follows:

§ 2575.1 In general.

In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 104-410, 104 Stat. 890, as amended by the section 31001(s) of the Debt Collection Improvement Act of 1996, Pub. L. 104-34, 110 Stat. 1321-373, and section 701 of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 129 Stat. 584, (collectively the Inflation Adjustment Act), the applicable civil monetary penalties of title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), under the jurisdiction of the U.S. Department of Labor (Department) and listed in 29 CFR 2575.2 are adjusted as set forth in this subpart, effective as of the relevant dates specified in § 2575.2.

§ 2575.2 Catch-up adjustments to civil monetary penalties.

The civil monetary penalties set forth in paragraphs (a) through (m) of this section are adjusted for inflation as required by section 4(b)(1) of the Inflation Adjustment Act and 29 CFR 2575.1 as follows:

(a) The civil monetary penalty of \$10 for each employee established by section 209(b) of ERISA, is adjusted to \$11 for violations occurring after July 29, 1997, for which a penalty is assessed before August 1, 2016 and to \$28 for penalties assessed after August 1, 2016,

and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(b) The civil monetary penalty of up to \$1,000 established by Section 502(c)(2) of ERISA is adjusted to \$1,100 for violations occurring after July 29, 1997, for which a penalty is assessed before August 1, 2016, and to \$2,063 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(c) The civil monetary penalty of up to \$1,000 established by section 502(c)(4) of ERISA is adjusted to \$1,632 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(d) The civil monetary penalty of up to \$1,000 established by Section 502(c)(5) of ERISA is adjusted to \$1,100 for violations occurring after March 24, 2003, for which a penalty is assessed before August 1, 2016, and to \$1,502 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(e) The civil monetary penalty of up to \$100 not to exceed \$1,000 per request, established by section 502(c)(6) of ERISA, is adjusted to \$110 not to exceed \$1,100 per request for violations occurring after March 24, 2003, for which a penalty is assessed before August 1, 2016, and to \$147 not to exceed \$1,472 per request for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(f) The civil monetary penalty of up to \$100 established by section 502(c)(7) of ERISA is adjusted to \$131 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(g) The civil monetary penalty of up to \$1,100 established by section 502(c)(8) of ERISA is adjusted to \$1,296 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(h) The civil monetary penalty of up to \$100 established by section 502(c)(9)(A) of ERISA is adjusted to \$110 for penalties assessed after August 1, 2016, and before the effective date of

the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(i) The civil monetary penalty of up to \$100 established by section 502(c)(9)(B) of ERISA is adjusted to \$110 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(j) The civil monetary penalties established by section 502(c)(10) of ERISA are adjusted in accordance with paragraphs (j)(1) through (4) of this section:

(1) The \$100 civil monetary penalty of section 502(c)(10)(B)(i) of ERISA is adjusted to \$110 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3;

(2) The \$2,500 minimum civil monetary penalty of section 502(c)(10)(C)(i) of ERISA for de minimis uncorrected violations is adjusted to \$2,745 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3;

(3) The \$15,000 minimum civil monetary penalty of section 502(c)(10)(C)(ii) of ERISA for uncorrected violations that are not de minimis is adjusted to \$16,473 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3; and

(4) The \$500,000 maximum civil monetary penalty for unintentional failures set in Section 502(c)(10)(D)(iii)(II) of ERISA is adjusted to \$549,095, for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(k) The civil monetary penalty of up to \$100 established by section 502(c)(12) of ERISA remains at \$100 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(l) The maximum civil monetary penalty of \$10,000 established by section 502(m) of ERISA is adjusted to \$15,909 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation

made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

(m) The civil monetary penalty of not more than \$1,000, established by Public Health Services Act section 2715(f) and incorporated into ERISA by section 715 of ERISA, is adjusted to \$1,087 for penalties assessed after August 1, 2016, and before the effective date of the next adjustment for inflation made by the Secretary in accordance with the Inflation Adjustment Act and § 2575.3.

§ 2575.3 Subsequent adjustments to civil monetary penalties.

No later than January 15, starting in 2017, and each subsequent year, the Secretary shall adjust for inflation the civil monetary penalties described in § 2575.2 and any future civil monetary penalties enforceable by the Secretary under title I of ERISA and publish such annual adjustments in the Federal Register notwithstanding section 553 of the Administrative Procedures Act. Future penalties or adjustments to the amount of the penalty that are enacted by statute or regulation will not be adjusted for inflation in the first year those penalty levels take effect. Annual inflation adjustments shall apply to penalties assessed after the later of January 15 or the date notice of the annual inflation adjustment is published in the Federal Register.

* * * * *

§§ 2575.100, 2575.209b-1, 2575.502c-2, 2575.502c-5, and 2575.502c-6 [Removed]

■ 54. Remove §§ 2575.100, 2575.209b-1, 2575.502c-2, 2575.502c-5, and 2575.502c-6.

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 55. The authority citation for part 2590 is revised to read as follows:

Authority: Secs. 29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104-191, 110 Stat. 1936; sec. 401(b), Pub. L. 105-200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110-343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111-148, 124 Stat. 119, as amended by Pub. L. 111-152, 124 Stat. 1029; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104-134, 110 Stat. 1321-373, and section 701 of Pub. L. 114-74, 129 Stat. 584; Secretary of Labor's Order 1-2011, 77 FR 1088 (January 9, 2012).

■ 56. Amend § 2590.715-2715 by revising the first sentence of paragraph (e) to read as follows:

§ 2590.715-2715 Summary of benefits and coverage and uniform glossary.

* * * * *

(e) Failure to provide. A group health plan that willfully fails to provide information under this section to a participant or beneficiary is subject to a fine of not more than \$1,000 (adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each such failure. * * *

Department of Labor

Mine Safety and Health Administration

For the reasons stated in the preamble, 30 CFR part 100 is amended as follows:

Title 30—Mineral Resources

PART 100—CIVIL PENALTIES FOR VIOLATIONS OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

■ 57. The authority citation for part 100 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 815, 820, 957; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114-74 at § 701;

■ 58. Amend § 100.3 by: ■ a. Revising the first sentence of paragraph (a)(1); and ■ b. Revising Table XIV in paragraph (g). The revisions read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) * * * (1) Except as provided in § 100.5(e), the operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, as amended, shall be assessed a civil penalty of not more than \$68,300. * * * (g) * * *

TABLE XIV—PENALTY CONVERSION TABLE

Table with 2 columns: Points and Penalty (\$). Rows range from 60 or fewer to 390.

TABLE XIV—PENALTY CONVERSION TABLE—Continued

Table with 2 columns: Points and Penalty (\$). Rows range from 75 to 140 or more.

* * * * * ■ 59. Amend § 100.4 by:

- a. Revising paragraphs (a) and (b); and
- b. Revising introductory paragraph (c).
The revisions read as follows:

§ 100.4 Unwarrantable failure and immediate notification.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be \$2,277.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be \$4,553.

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than \$5,692 and not more than \$68,300 for the following accidents:

* * * * *

- 60. Amend § 100.5 by revising paragraphs (c), (d), and (e) to read as follows:

§ 100.5 Determination of penalty amount; special assessment.

* * * * *

(c) Any operator who fails to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than \$7,399 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty of not more

than \$313 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than \$250,433. For purposes of this section, a flagrant violation means “a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.”

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX 1—INFLATION ADJUSTMENT ACT—PENALTY ADJUSTMENTS

Agency	Law	Name/Description	CFR Citation	Last year adjusted (non IAA)	Authority for last adjustment (non IAA)	Min penalty (non IAA) (\$)	Max penalty (non IAA) (\$)	11/15 Min (\$)	11/15 Max (\$)	New min (rounded to nearest dollar)	New max (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Regular Assessment	30 CFR 100.3(A)	2007	72 FR 13592	60,000	60,000	70,000	70,000	68,300.	68,300.
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(G)	2007	72 FR 13592	112	60,000	112	70,000	127	68,300.
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum Penalty for any order issued under 104(d)(1) of the Mine Act.	30 CFR 100.4(a)	2007	72 FR 13592	2,000		2,000		2,277	
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum penalty for any order issued under 104(d)(2) of the Mine Act.	30 CFR 100.4(b)	2007	72 FR 13592	4,000		4,000		4,553	
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty for failure to provide timely notification under 103(j) of the Mine Act.	39 CFR 100.4(c)	2007	72 FR 13592	5,000	60,000	5,000	65,000	5,692	68,300.
MSHA	Federal Mine Safety & Health Act of 1977.	Any operator who fails to correct a violation for which a citation or order was issued under 104(a) of the Mine Act.	30 CFR 100.5(C)	2007	72 FR 13592		6,500		7,500		7,399.
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(D)	2007	72 FR 13592		275		375		313.
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e)	2007	72 FR 13592		220,000		242,000		250,433.
EBSA	Employee Retirement Income Security Act.	Section 209(b): Failure to furnish reports (e.g., pension benefit statements) to certain former participants and beneficiaries or maintain records.	29 CFR 2575.2(a)	1974	Pub. L. 93-406	10		11			28.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(2)—Per day for failure/refusal to properly file plan annual report.	29 CFR 2575.2(b)	1987	Pub. L. 100-203		1,000		1,100		2,063.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(4)—Per day for failure to disclose certain documents upon request under ERISA 101(k) and (l); failure to furnish notices under 101(j) and 514(e)(3)—each statutory recipient a separate violation.	29 CFR 2575.2(c)	1993	Pub. L. 103-66		1,000		1,000		1,632.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(5)—Per day for each failure to file annual report for Multiple Employer Welfare Arrangements (MEWAs).	29 CFR 2575.2(d)	1996	Pub. L. 104-91		1,000		1,100		1,502.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(6)—Per day for each failure to provide Secretary of Labor requested documentation not to exceed a per-request maximum.	29 CFR 2575.2(e)	1997	Pub. L. 105-34		100 per day, not to exceed 1,000 per request.		110 per day, not to exceed 1,100 per request.		147 per day, not to exceed 1,472 per request.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(7)—Per day for each failure to provide notices of blackout periods and of right to divest employer securities—each statutory recipient a separate violation.	29 CFR 2575.2(f)	2002	Pub. L. 107-204		100		100		131.

APPENDIX 1—INFLATION ADJUSTMENT ACT—PENALTY ADJUSTMENTS—Continued

Agency	Law	Name/ Description	CFR Citation	Last year adjusted (non IAA)	Authority for last adjustment (non IAA)	Min penalty (non IAA) (\$)	Max penalty (non IAA) (\$)	11/15 Min (\$)	11/15 Max (\$)	New min (rounded to nearest dollar)	New max (rounded to nearest dollar)
EBSA	Employee Retirement Income Security Act.	Section 502(c)(8)—Per each failure by an endangered status multi-employer plan to adopt a funding improvement plan or meet benchmarks; failure of a critical status multiemployer plan to adopt a rehabilitation plan.	29 CFR 2575.2(g)	2006	Pub. L. 109-280	1,100	1,100	1,100	1,100	1,296.	1,296.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(A)—Per day for each failure by an employer to inform employees of CHIP coverage opportunities under Section 701(f)(3)(B)(i)—each employee a separate violation.	29 CFR 2575.2(h)	2009	Pub. L. 111-3	100	100	100	100	110.	110.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(B)—Per day for each failure by a plan to timely provide to any State information required to be disclosed under Section 701(f)(3)(B)(ii), as added by CHIP regarding coverage coordination—each participant/beneficiary a separate violation.	29 CFR 2575.2(i)	2009	Pub. L. 111-3	100	100	100	100	110.	110.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—Failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of Sections 702(a)(1)(F), (b)(3), (c) or (d); or Section 701; or Section 702(b)(1) with respect to genetic information—daily per participant and beneficiary non-compliance period.	29 CFR 2575.2(j)(1)	2008	Pub. L. 110-233	100	100	100	100	110.	110.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.2(j)(2)	2008	Pub. L. 110-233	2,500	2,500	2,500	2,500	2,745	2,745
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.2(j)(3)	2008	Pub. L. 110-233	15,000	15,000	15,000	15,000	16,473	16,473
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.2(j)(4)	2008	Pub. L. 110-233	500,000	500,000	500,000	500,000	549,095.	549,095.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(12)—Per day for each failure of a CSEC plan in restoration status to adopt a restoration plan.	29 CFR 2575.2(k)	2014	Pub. L. 113-97	100	100	100	100	100.	100.

EBSA	Employee Retirement Income Security Act.	Section 502(m)—Failure of fiduciary to make a proper distribution from a defined benefit plan under section 206(e) of ERISA.	29 CFR 2575.2(l)	1994	Pub. L. 103-465	10,000	10,000	10,000	10,000	15,909.
EBSA	Employee Retirement Income Security Act.	Failure to provide Summary of Benefits Coverage under PHS Act section 2715(f), as incorporated in ERISA section 715 and 29 CFR 2590.715-2715(e).	29 CFR 2575.2(m)	2010	Pub. L. 111-148	1,000	1,000	1,000	1,000	1,087.
OSHA	Occupational Safety and Health Act.	Other-Than-Serious Serious Violation	29 CFR 1903.15(d)(3)	1990	Pub. L. 101-508	7,000	7,000	7,000	7,000	12,471.
OSHA	Occupational Safety and Health Act.	Willful or Repeated	29 CFR 1903.15(d)(4)	1990	Pub. L. 101-508	7,000	7,000	7,000	7,000	12,471.
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(2), 29 CFR 1903.15(d)(6)	1990	Pub. L. 101-508	5,000	70,000	70,000	8,908	124,709.
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5)	1990	Pub. L. 101-508	7,000	7,000	7,000	7,000	12,471.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1)	1993	Pub. L. 103-3	100	100	110	163.	163.
WHD	Fair Labor Standards Act	FLSA	29 CFR 578.3(a)	1989	Pub. L. 101-157	1,000	1,000	1,100	1,894.	1,894.
WHD	Fair Labor Standards Act	Child Labor	29 CFR 579.1(a)(1)(i)(A)	2008	Pub. L. 110-233	11,000	11,000	11,000	12,080.	12,080.
WHD	Fair Labor Standards Act	Child Labor resulting in serious injury or death.	29 CFR 579.1(a)(1)(i)(B)	2008	Pub. L. 110-233	50,000	50,000	50,000	54,910.	54,910.
WHD	Fair Labor Standards Act	CL willful or repeated resulting in serious injury or death.	29 CFR 579.1(a)(1)(i)(E)	2008	Pub. L. 110-233	100,000	100,000	100,000	109,820.	109,820.
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)	1983	Pub. L. 97-470	1,000	1,000	1,000	2,355.	2,355.
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1)	1990	Pub. L. 101-649	1,000	1,000	1,000	1,782.	1,782.
WHD	Immigration & Nationality Act.	H1B willful or discrimination.	20 CFR 655.810(b)(2)	1998	Pub. L. 105-277	5,000	5,000	5,000	7,251.	7,251.
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3)	1998	Pub. L. 105-277	35,000	35,000	35,000	50,798.	50,798.
WHD	Immigration & Nationality Act.	H2B	29 CFR 503.23	2005	Pub. L. 109-13	10,000	10,000	10,000	11,940.	11,940.
WHD	Immigration & Nationality Act.	D-1	20 CFR 655.620	1990	Pub. L. 101-649	5,000	5,000	5,000	8,908.	8,908.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)	1962	Pub. L. 87-581	10	10	10	25.	25.
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50-201.3(e)	1936	49 Stat. 2036	10	10	10	25.	25.
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)	1988	Pub. L. 100-347	10,000	10,000	10,000	19,787.	19,787.
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)	2010	75 FR 6884	1,500	1,500	1,500	1,631.	1,631.
WHD	Immigration & Nationality Act.	H2A willful or discrimination.	29 CFR 501.19(c)(1)	2008	73 FR 77110	5,000	5,000	5,000	5,491.	5,491.
WHD	Immigration & Nationality Act.	H2A safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)	2010	75 FR 6,884	50,000	50,000	50,000	54,373.	54,373.
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(4)	2010	75 FR 6884	100,000	100,000	100,000	108,745.	108,745.
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)	2008	73 FR 77110	5,000	5,000	5,000	5,491.	5,491.
WHD	Immigration & Nationality Act.	H2A displacing a US worker.	29 CFR 501.19(e)	2010	75 FR 6,884	15,000	15,000	15,000	16,312.	16,312.
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker.	29 CFR 501.19(f)	2010	75 FR 6,884	15,000	15,000	15,000	16,312.	16,312.
WHD	Fair Labor Standards Act	Home Worker	29 CFR 530.302	1988	53 FR 45706	10	500	500	989.	989.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to file first report of injury or filing a false statement or misrepresentation in first report.	20 CFR 702.204	1984	Pub. L. 98-426	10,000	10,000	11,000	22,587.	22,587.

APPENDIX 1—INFLATION ADJUSTMENT ACT—PENALTY ADJUSTMENTS—Continued

Agency	Law	Name/ Description	CFR Citation	Last year adjusted (non IAA)	Authority for last adjustment (non IAA)	Min penalty (non IAA) (\$)	Max penalty (non IAA) (\$)	11/15 Min (\$)	11/15 Max (\$)	New min (rounded to nearest dollar)	New max (rounded to nearest dollar)
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments.	20 CFR 702.236	1927	44 Stat. 1432	100	100	110	110	275.	275.
OWCP	Longshore and Harbor Workers' Compensation Act.	Discrimination against employees who claim compensation or testify in a LHWCA proceeding.	20 CFR 702.271(a)(2)	1984	Pub. L. 98-426	1,000	5,000	1,100	5,500	2,259	11,293.
OWCP	Black Lung Benefits Act	Failure to report termination of payments.	20 CFR 725.621(b), (d)	1978	Pub. L. 95-239	500	500	550	550	1,375.	1,375.
OWCP	Black Lung Benefits Act	Failure to file required reports.	20 CFR 725.621(d)	1978	Pub. L. 95-239	500	500	550	550	1,375.	1,375.
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits.	20 CFR 726.300	1978	Pub. L. 95-239	1,000	1,000	1,000	1,000	2,500.	2,500.
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with fewer than 25 employees.	20 CFR 726.302(c)(2)(i)	2001	65 FR 79920	100	100	100	100	134	134
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with 25-50 employees.	20 CFR 726.302(c)(2)(ii)	2001	65 FR 79920	200	200	200	200	268	268
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with more than 100 employees.	20 CFR 726.302(c)(2)(iii)	2001	65 FR 79920	300	300	300	300	402	402
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for mines with 51-100 employees.	20 CFR 726.302(c)(4)	2001	65 FR 79920	400	400	400	400	535	535
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits after 10th day of notice.	20 CFR 726.302(c)(5)	2001	65 FR 79920	100	100	100	100	134	134
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5)	2001	65 FR 79920	300	300	300	300	402	402
OWCP	Black Lung Benefits Act	Failure to secure payment of benefits.	20 CFR 726.302(c)(5)	1978	Pub. L. 95-239	1,100	1,100	1,100	1,100	2,750.	2,750.

¹⁷ See supra note 6.

Signed at Washington, DC, this 24th day of
June, 2016.

Thomas E. Perez,

Secretary, U.S. Department of Labor.

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