

(h) Additional Information

Appendix B of Sikorsky S-330 Model 269D Helicopter Basic Handbook of Maintenance Instructions, No. CSP-D-2, dated February 1, 1993, and revised October 15, 2014; Appendix B of Sikorsky S-330 Model 269D Config. "A" Helicopter Basic Handbook of Maintenance Instructions, No. CSP-D-9, dated July 20, 2001, and revised October 15, 2014; and Sikorsky 269D Helicopter Alert Service Bulletin DB-052, Basic Issue, dated January 16, 2014, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1-800-Winged-S or 203-416-4299; email wcs_cust_service_eng.gr-sik@lmco.com. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

(i) Subject

Joint Aircraft Service Component (JASC)
Code: 6310, Engine/Transmission Coupling.

Issued in Fort Worth, Texas, on January 17, 2018.

Lance T. Gant,

*Director, Compliance & Airworthiness
Division, Aircraft Certification Service.*

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DEPARTMENT OF JUSTICE**28 CFR Part 85**

[Docket No. OAG 159; AG Order No. 4093-2018]

Civil Monetary Penalties Inflation Adjustment

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after January 29, 2018, with respect to violations occurring after November 2, 2015.

DATES: This rule is effective January 29, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015) ("BBA"), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410 (the "Inflation Adjustment Act"), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments.

The BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), the Department published a final rule to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after that date, with respect to violations occurring after November 2, 2015.

II. Inflation Adjustments Made by This Rule

As required, the Department is publishing this final rule to adjust the civil penalties that were most recently adjusted as of February 3, 2017. Under the statutory formula, the adjustments made by this rule are based on the Bureau of Labor Statistics' Consumer Price Index for October 2017. The OMB Memorandum for the Heads of Executive Departments and Agencies M-18-03 (Dec. 15, 2017), <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf> (last visited Jan. 1, 2018), instructs that the applicable inflation factor for this adjustment is 1.02041. Accordingly, this rule adjusts the civil penalty amounts in 28 CFR 85.5 by applying this inflation factor mechanically to each of the civil penalty amounts listed (rounded to the nearest dollar).

Example:

- In 2016, the Program Fraud Civil Remedies Act penalty was increased to \$10,781 in accordance with the adjustment requirements of the BBA.
- For 2017, where the applicable inflation factor was 1.01636, the existing penalty of \$10,781 was multiplied by 1.01636 and revised to \$10,957 (rounded to the nearest dollar).
- For this final rule in 2018, where the applicable inflation factor is 1.02041, the existing penalty of \$10,957 is multiplied by 1.02041 and revised to \$11,181 (rounded to the nearest dollar).

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

III. Effective Date of Adjusted Civil Penalty Amounts

Under this rule, the adjusted civil penalty amounts are applicable only to civil penalties assessed after January 29, 2018, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA.

The penalty amounts set forth in the existing table in 28 CFR 85.5 are applicable to civil penalties assessed after August 1, 2016, and on or before the effective date of this rule, with respect to violations occurring after November 2, 2015. Civil penalties for violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations in 28 CFR parts 20, 22, 36, 68, 71, 76, and 85 as such regulations were in effect prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016).

Statutory and Regulatory Analyses*Administrative Procedure Act*

The BBA provides that, for each annual adjustment made after the initial adjustments of civil penalties in 2016, the head of an agency shall adjust the civil monetary penalties each year notwithstanding 5 U.S.C. 553. Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a delayed effective date.

Regulatory Flexibility Act

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. See 5 U.S.C. 603(a).

Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the BBA by making an across-the-board adjustment of the civil penalty amounts in 28 CFR 85.5 to account for inflation since the adoption of the Department’s final rule published on February 3, 2017.

Executive Order 13132—Federalism

This rule will 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 85

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

■ 1. The authority citation for part 85 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 2. Revise § 85.5 to read as follows:

§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

For civil penalties assessed after January 29, 2018, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the sixth column of the following table. For civil penalties assessed after February 3, 2017, and on or before January 29, 2018, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fifth column of the following table. For civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of the following table. All figures set forth in this table are maximum penalties, unless otherwise indicated.

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$) ¹	DOJ penalty assessed after 1/29/2018 (\$) ²
ATF					
18 U.S.C. 922(t)(5)	Brady Law—Nat’l Instant Criminal Check System; Transfer of firearm without checking NICS.	.....	8,162	8,296	8,465.
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.	.....	2,985	3,034	3,096.
Civil Division					
12 USC 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6)	1,893,610	1,924,589	1,963,870.
12 U.S.C. 1833a(b)(2) ..	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	1,893,610	1,924,589	1,963,870.
12 U.S.C. 1833a(b)(2) ..	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	9,468,050	9,622,947	9,819,351.
22 U.S.C. 2399b(a)(3)(A).	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8)	5,500	5,590	5,704.
31 U.S.C. 3729(a)	False Claims Act; ³ Violations	28 CFR 85.3(a)(9)	Min. 10,781, Max. 21,563.	Min. 10,957, Max. 21,916.	Min. 11,181, Max. 22,363.

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$) ¹	DOJ penalty assessed after 1/29/2018 (\$) ²
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	10,781	10,957	11,181.
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	10,781	10,957	11,181.
40 U.S.C. 123(a)(1)(A) ..	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12)	5,500	5,590	5,704.
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks ⁴ (per occurrence).	28 CFR 85.3(a)(13)	21,563	21,916	22,363.
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).	.....	7,954	8,084	8,249.
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes ⁵ (per violation).	28 CFR 85.3(c)	94,681	96,230	98,194.
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; ⁶ Violation by an individual (per violation).	.....	98,935	100,554	102,606.
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; ⁶ Violation by an organization (per violation).	.....	989,345	1,005,531	1,026,054.
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; ⁷ Violation (per violation).	.....	12,500	12,705	12,964.

Civil Rights Division (excluding immigration-related penalties)

18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i)	15,909	16,169	16,499.
18 U.S.C. 248(c)(2)(B)(ii).	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii)	23,863	24,253	24,748.
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i)	23,863	24,253	24,748.
18 U.S.C. 248(c)(2)(B)(ii).	FACE Act; Violation other than a nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(2)(ii)	39,772	40,423	41,248.
42 U.S.C. 3614(d)(1)(C)(i).	Fair Housing Act of 1968; first violation	28 CFR 85.3(b)(3)(i)	98,935	100,554	102,606.
42 U.S.C. 3614(d)(1)(C)(ii).	Fair Housing Act of 1968; subsequent violation	28 CFR 85.3(b)(3)(ii)	197,869	201,106	205,211.
42 U.S.C. 12188(b)(2)(C)(i).	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i)	89,078	90,535	92,383.
42 U.S.C. 12188(b)(2)(C)(ii).	Americans With Disabilities Act; Public accommodations for individuals with disabilities, subsequent violation.	28 CFR 36.504(a)(3)(ii)	178,156	181,071	184,767.
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i)	59,810	60,788	62,029.
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii)	119,620	121,577	124,058.

Criminal Division

18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.	.....	Min. 342, Max. 6,834.	Min. 348, Max. 6,946.	Min. 355, Max. 7,088.
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation ⁸.	.....	21,563	21,916	22,363.

DEA

21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	19,787	20,111	20,521.
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	68,750	69,875	71,301.
21 U.S.C. 842(c)(1)(A) ..	Controlled Substances Act ("CSA"); Violations of 842(a)—other than (5), (10) and (16)—Prohibited acts re: controlled substances (per violation).	.....	62,500	63,523	64,820.
21 U.S.C. 842(c)(1)(B) ..	CSA; Violations of 842(a)(5) and (10)—Prohibited acts re: controlled substances.	.....	14,502	14,739	15,040.
21 U.S.C. 842(c)(1)(C) ..	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).	.....	500,855	509,049	519,439.
21 U.S.C. 842(c)(1)(D) ..	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).	.....	1,002	1,018	1,039.
21 U.S.C. 842(c)(2)(C) ..	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard ⁹.	.....	375,613	381,758	389,550.
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises ¹⁰.	.....	321,403	326,661	333,328.

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$) ¹	DOJ penalty assessed after 1/29/2018 (\$) ²
Immigration-Related Penalties					
8 U.S.C. 1324a(e)(4)(A)(i).	Immigration Reform and Control Act of 1986 ("IRCA"); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i) ...	Min. 539, Max. 4,313.	Min. 548, Max. 4,384.	Min. 559, Max. 4,473.
8 U.S.C. 1324a(e)(4)(A)(ii).	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii) ..	Min. 4,313, Max. 10,781.	Min. 4,384, Max. 10,957.	Min. 4,473, Max. 11,181.
8 U.S.C. 1324a(e)(4)(A)(iii).	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii)	Min. 6,469, Max. 21,563.	Min. 6,575, Max. 21,916.	Min. 6,709, Max. 22,363.
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5)	Min. 216, Max. 2,156.	Min. 220, Max. 2,191.	Min. 224, Max. 2,236.
8 U.S.C. 1324a, (note) ..	IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual).	28 CFR 68.52(c)(6)	Min. 751 Max. 1,502.	Min. 763, Max. 1,527.	Min. 779, Max. 1,558.
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7)	2,156	2,191	2,236.
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii)	Min. 445, Max. 3,563.	Min. 452, Max. 3,621.	Min. 461, Max. 3,695.
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix)	Min. 3,563, Max. 8,908.	Min. 3,621, Max. 9,054.	Min. 3,695, Max. 9,239.
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x)	Min. 5,345, Max. 17,816.	Min. 5,432, Max. 18,107.	Min. 5,543, Max. 18,477.
8 U.S.C. 1324b(g)(2)(B)(iv)(IV).	IRCA; Unfair immigration-related employment practices, unfair documentary practices (per individual discriminated against).	28 CFR 68.52(d)(1)(xii)	Min. 178, Max. 1,782.	Min. 181, Max. 1,811.	Min. 185, Max. 1,848.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in USC 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i) ..	Min. 445, Max. 3,563.	Min. 452, Max. 3,621.	Min. 461, Max. 3,695.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in USC 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii)	Min. 3,563, Max. 8,908.	Min. 3,621, Max. 9,054.	Min. 3,695, Max. 9,239.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in USC 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii) ..	Min. 376, Max. 3,005.	Min. 382, Max. 3,054.	Min. 390, Max. 3,116.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in USC 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv)	Min. 3,005, Max. 7,512.	Min. 3,054, Max. 7,635.	Min. 3,116, Max. 7,791.
FBI					
49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).	.....	1,591	1,617	1,650.
Office of Justice Programs					
34 U.S.C. 10231(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR 20.25	27,500	27,950	28,520.

¹ The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation on February 3, 2017.

² All figures set forth in this table are maximum penalties, unless otherwise indicated.

³ Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1) (2015). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. *Id.* section 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

⁴ Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 44 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than \$10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

⁵ Section 216(b) of Title 18 provides that the civil penalty should be no more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b) (2015). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

⁶ Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b) (2015). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. *Id.* section 2105(b). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

⁷ The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2015). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

⁸ Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or \$10,000. 18 U.S.C. 1956(b)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

⁹Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C) (2015). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

¹⁰Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of \$250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

Dated: January 19, 2018.

Jefferson B. Sessions III,
Attorney General.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-256-FOR; OSM-2012-0014; S1D1S
SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000
18XS051020]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval with exceptions.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, with exceptions, an amendment to the Kentucky regulatory program (hereinafter, the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted a proposed amendment to OSMRE that revises its bonding regulations to satisfy, in part, concerns OSMRE conveyed to the State pertaining to bonding inadequacies.
DATES: The effective date is February 28, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Evans, Lexington Field Office Director. Telephone: (859) 260-3900. Email: bevans@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Amendment
- III. OSMRE’s Findings
- IV. Summary and Disposition of Comments
- V. OSMRE’s Decision
- VI. Procedural Determinations

I. Background on the Kentucky Program

A. Background: Kentucky Regulatory Program: Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its

borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky’s program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

B. Background: Kentucky Bonding Program: The following is a description of the bonding program implemented by Kentucky and approved by OSMRE in 1986. Permittees are required to furnish a performance bond that covers the area of land upon which the operator will initiate and conduct surface coal mining and reclamation operations. The amount of the bond should be sufficient to assure completion of the reclamation plan. Kentucky’s program included two options to post bond: (1) Post a full-cost bonding (performance bond covering the entire cost of reclamation); or (2) participate in a voluntary bond pool (VBP) and post a reduced permit-specific performance bond. The VBP, an alternative bonding system (ABS), was limited to qualified applicants and required membership fees and production fees that were used to supplement the reduced permit-specific performance bonds posted for surface mining operations. Generally, the second option was used by smaller operators that would otherwise have difficulty posting a full-cost bond due to limited financial resources.

1. Permit-Specific Bonds for Non-VBP Members: If an applicant/permittee elected not to participate or did not qualify to become a member of the VBP, the permittee was required to submit an adequate “full-cost” bond using a basic bond rate of \$2500/acre to which several site factors (difficulty of mining, geologic/hydrologic concerns,

permanent structures, etc.) were added as additional rates per acre if necessary. Over 90% of Kentucky permits were not part of the VBP.

2. Alternative Bonding System: In lieu of requiring all permittees to submit permit-specific performance bonds covering the full cost of permit-specific reclamation for coal mining operations, we approved a request from Kentucky to implement an ABS as provided for in 30 CFR 800.11(e). The requirements of § 800.11(e) provide that an alternative system to the permit-specific bond requirements could be authorized if the following two conditions are met: (1) The ABS would assure sufficient money is available to complete the reclamation plan for any areas which may be in default at any time and (2) the ABS provides a substantial economic incentive for the permittee to comply with all reclamation provisions. Kentucky’s ABS created the VBP. We announced approval of Kentucky’s ABS in the July 18, 1986, **Federal Register** (51 FR 26002).

a. ABS—Voluntary Bond Pool Fund Membership: Participation in the Kentucky bond pool was voluntary, limited to qualified participants, and required application for membership. Bond pool members, herein referred to as VBP members, were permitted to post a performance bond to cover the costs of reclamation under the Kentucky program that was less than the estimated full cost of reclamation if the member qualified for participation in the bond pool and paid the required fees to the VBP’s supplemental fund. The VBP fund would then be used to supplement the reduced operator bond in the event of operator default on reclamation. Acceptance into the VBP was based on the applicant’s financial standing and reclamation compliance record.

Applicants for membership in the VBP qualified for an “A,” “B,” or “C” rating, based on length of time the applicant had held a permit under the same permittee name and the type of compliance rating, “excellent” or “acceptable,” the permittee had exhibited. The rating method also considered such things as number and seriousness of violations for which the applicant had been cited, applicant’s abatement of violations, timely payment