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Scott M. Rosenbloom,

Manager, *Airspace Rules and Regulations*.

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 723, 724, 845, and 846**

[Docket ID: OSM 2022-0001; S1D1S SS08011000 SX064A000 22S180110; S2D2S SS08011000 SX064A00 22XS501520]

RIN 1029-AC80

**Civil Monetary Penalty Inflation Adjustments**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), and Office of Management and Budget (OMB) guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

**DATES:** Effective March 21, 2022.

**FOR FURTHER INFORMATION CONTACT:** Khalia A. Boyd, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4558, Washington, DC 20240; Telephone (202) 208-2823. Email: [kboyd@osmre.gov](mailto:kboyd@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess civil monetary penalties (CMPs) for violations of SMCRA. The Office of Surface Mining Reclamation and Enforcement’s (OSMRE) regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. We are adjusting CMPs in six sections—30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14.

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (2015 Act) into law. The 2015 Act, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified, as amended, at 28 U.S.C. 2461 note), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act required an initial “catch-up” adjustment. OSMRE published the initial adjustment in the **Federal Register** on July 8, 2016 (81 FR 44535), and the adjustment took effect on August 1, 2016. The 2015 Act also requires agencies to publish annual inflation adjustments in the **Federal Register** no later than January 15 of each year. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties. Further, the 2015 Act provides that agencies must adjust civil monetary penalties “notwithstanding section 553 of [the Administrative Procedure Act (APA)].” Therefore, “the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.” December 15, 2021, Memorandum for the Heads of Executive Departments and Agencies (M-22-07) from Shalanda D. Young, Acting Director, Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum), at 3-4.

Pursuant to SMCRA and the 2015 Act, this final rule reflects the statutorily required CMP adjustments as follows:

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
30 CFR 723.14 .....	1	\$69	\$73
	2	139	148
	3	208	221
	4	277	294
	5	346	368
	6	416	442
	7	485	515
	8	552	586
	9	623	662
	10	693	736
	11	761	808
	12	831	883
	13	898	954
	14	969	1,029
	15	1,040	1,105
	16	1,108	1,177
	17	1,177	1,250

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
	18	1,248	1,326
	19	1,316	1,398
	20	1,385	1,471
	21	1,455	1,546
	22	1,524	1,619
	23	1,593	1,692
	24	1,661	1,764
	25	1,731	1,839
	26	2,078	2,207
	27	2,424	2,575
	28	2,768	2,940
	29	2,984	3,170
	30	3,463	3,678
	31	3,808	4,045
	32	4,155	4,414
	33	4,502	4,782
	34	4,848	5,150
	35	5,194	5,517
	36	5,540	5,885
	37	5,888	6,254
	38	6,233	6,621
	39	6,579	6,988
	40	6,924	7,355
	41	7,273	7,726
	42	7,618	8,092
	43	7,963	8,458
	44	8,310	8,827
	45	8,656	9,195
	46	9,003	9,563
	47	9,348	9,930
	48	9,696	10,299
	49	10,041	10,666
	50	10,387	11,033
	51	10,732	11,400
	52	11,081	11,770
	53	11,427	12,138
	54	11,773	12,506
	55	12,121	12,875
	56	12,466	13,242
	57	12,811	13,608
	58	13,157	13,976
	59	13,505	14,345
	60	13,850	14,712
	61	14,196	15,079
	62	14,543	15,448
	63	14,890	15,816
	64	15,236	16,184
	65	15,581	16,550
	66	15,929	16,920
	67	16,274	17,287
	68	16,620	17,654
	69	16,966	18,022
	70	17,314	18,391
30 CFR 723.15(b) (Assessment of separate violations for each day) .....	.....	2,596	2,758
30 CFR 724.14(b) (Individual civil penalties) .....	.....	17,314	18,391
30 CFR 845.14 .....	1	69	73
	2	139	148
	3	208	221
	4	277	294
	5	346	368
	6	416	442
	7	485	515
	8	552	586
	9	623	662
	10	693	736
	11	761	808
	12	831	883
	13	898	954
	14	969	1,029
	15	1,040	1,105
	16	1,108	1,177
	17	1,177	1,250
	18	1,248	1,326

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	19	1,316	1,398
	20	1,385	1,471
	21	1,455	1,546
	22	1,524	1,619
	23	1,593	1,692
	24	1,661	1,764
	25	1,731	1,839
	26	2,078	2,207
	27	2,424	2,575
	28	2,768	2,940
	29	2,984	3,170
	30	3,463	3,678
	31	3,808	4,045
	32	4,155	4,414
	33	4,502	4,782
	34	4,848	5,150
	35	5,194	5,517
	36	5,540	5,885
	37	5,888	6,254
	38	6,233	6,621
	39	6,579	6,988
	40	6,924	7,355
	41	7,273	7,726
	42	7,618	8,092
	43	7,963	8,458
	44	8,310	8,827
	45	8,656	9,195
	46	9,003	9,563
	47	9,348	9,930
	48	9,696	10,299
	49	10,041	10,666
	50	10,387	11,033
	51	10,732	11,400
	52	11,081	11,770
	53	11,427	12,138
	54	11,773	12,506
	55	12,121	12,875
	56	12,466	13,242
	57	12,811	13,608
	58	13,157	13,976
	59	13,505	14,345
	60	13,850	14,712
	61	14,196	15,079
	62	14,543	15,448
	63	14,890	15,816
	64	15,236	16,184
	65	15,581	16,550
	66	15,929	16,920
	67	16,274	17,287
	68	16,620	17,654
	69	16,996	18,022
	70	17,314	18,391
30 CFR 845.15(b) (Assessment of separate violations for each day) .....	.....	2,596	2,758
30 CFR 846.14(b) (Individual civil penalties) .....	.....	17,314	18,391

In the chart above, there are no numbers listed in the “Points” column relative to 30 CFR 723.15(b), 30 CFR 724.14(b), 30 CFR 845.15(b), and 30 CFR 846.14(b) because those regulatory provisions do not set forth numbers of points. For those provisions, the current regulations only set forth the dollar amounts shown in the chart in the “Current Penalty Dollar Amounts” column; the adjusted amounts, which we are adopting in this rule, are shown in the “Adjusted Penalty Dollar Amounts” column.

*B. Calculation of Adjustments*

OMB issued guidance on the 2022 annual adjustments for inflation. See OMB Memorandum (December 15, 2021). The OMB Memorandum notes that the 1990 Act defines “civil monetary penalty” as “any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law; or . . . has a maximum amount provided for by Federal law; and . . . is assessed or enforced by an agency pursuant to Federal law; and . . . is assessed or enforced pursuant to

an administrative proceeding or a civil action in the Federal courts . . . .” *Id.* at 2. It further instructs that agencies “are to adjust ‘the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.’” *Id.* The 1990 Act, as amended by the 2015 Act, and the OMB Memorandum specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers

(the CPI-U) published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI-U for the preceding year. The recent OMB Memorandum specified that the cost-of-living adjustment multiplier for 2022, not seasonally adjusted, is 1.06222 (the October 2021 CPI-U (276.589) divided by the October 2020 CPI-U (260.388) = 1.06222). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act, as amended by the 2015 Act, specifies that any resulting increases in CMPs must be rounded according to a stated rounding formula and that the increased CMPs apply only to CMP assessments that occur after the date that the increases take effect.

Generally, OSMRE assigns points to a violation as described in 30 CFR 723.13 and 845.13. The CMP owed is based on the number of points received, ranging from one point to 70 points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a \$17,314 CMP. To adjust this amount, we multiply \$17,314 by the 2021 inflation factor of 1.06222, resulting in a raw adjusted amount of \$18,391.28. Because the 2015 Act requires us to round any increase in the CMP amount to the nearest dollar, in this case a violation of 70 points would amount to a new CMP of \$18,391. Pursuant to the 2015 Act, the increases in this Final Rule apply to CMPs assessed after the date the increases take effect, even if the associated violation predates the applicable increase.

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

OSMRE directly regulates surface coal mining and reclamation operations within a State or on Indian lands if the State or Tribe does not obtain its own approved program pursuant to sections 503 or 710(j) of SMCRA, 30 U.S.C. 1253 or 1300(j). The increases in CMPs contained in this rule will apply to the following Federal program States: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Under 30 CFR 750.18, the increases in CMPs also apply to Indian lands under the Federal program for Indian lands.

### D. Effect of the Rule on Approved State Programs

As a result of litigation, *see In re Permanent Surface Mining Regulation Litigation*, No. 79-1144, Mem. Op. (D.D.C. May 16, 1980), 19 Env't. Rep. Cas. (BNA) 1477, State regulatory programs are not required to mirror all of the penalty provisions of our regulations. Thus, this rule has no effect on CMPs in States with SMCRA primacy.

## II. Procedural Matters

### A. Regulatory Planning and Review (*Executive Orders 12866 and 13563*)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum. Because this final rule exclusively implements the annual inflation adjustments, is consistent with the OMB Memorandum, and will have an annual impact of less than \$100 million, it is not significant under Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties

Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually for inflation "notwithstanding section 553 [of the Administrative Procedure Act]." Thus, no proposed rule will be published, and the RFA does not apply to this rulemaking.

### C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### E. Takings (*Executive Order 12630*)

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

### F. Federalism (*Executive Order 13132*)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

### G. Civil Justice Reform (*Executive Order 12988*)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written

in clear language and contain clear legal standards.

*H. Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)*

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

*I. Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*J. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information *see* 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*K. Effects on Energy Supply, Distribution, and Use (Executive Order 13211)*

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

*L. Clarity of This Regulation*

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of

June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*M. Data Quality Act*

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

*N. Administrative Procedure Act*

We are issuing this final rule without prior public notice or opportunity for public comment. As discussed above, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually. Under the 2015 Act, the public procedure that the Administrative Procedure Act generally requires—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual adjustments required by the 2015 Act. *See* OMB Memorandum, M-22-07, at 3-4.

*O. National Technology Transfer and Advancement Act*

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

*P. Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045)*

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

**List of Subjects**

*30 CFR Part 723*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

*30 CFR Part 724*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

*30 CFR Part 845*

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 846*

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

**Delegation of Signing Authority**

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

**Laura Daniel-Davis,**

*Principal Deputy Assistant Secretary, Land and Minerals Management.*

For the reasons given in the preamble, the Department of the Interior amends 30 CFR parts 723, 724, 845, and 846 as set forth below.

**PART 723—CIVIL PENALTIES**

- 1. The authority citation for part 723 continues to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

- 2. Revise the table in § 723.14 to read as follows:

**§ 723.14 Determination of amount of penalty.**

\* \* \* \* \*

TABLE 1 TO § 723.14

	Points	Dollars
1 .....		73
2 .....		148
3 .....		221

TABLE 1 TO § 723.14—Continued

Points	Dollars
4	294
5	368
6	442
7	515
8	586
9	662
10	736
11	808
12	883
13	954
14	1,029
15	1,105
16	1,177
17	1,250
18	1,326
19	1,398
20	1,471
21	1,546
22	1,619
23	1,692
24	1,764
25	1,839
26	2,207
27	2,575
28	2,940
29	3,170
30	3,678
31	4,045
32	4,414
33	4,782
34	5,150
35	5,517
36	5,885
37	6,254
38	6,621
39	6,988
40	7,355
41	7,726
42	8,092
43	8,458
44	8,827
45	9,195
46	9,563
47	9,930
48	10,299
49	10,666
50	11,033
51	11,400
52	11,770
53	12,138
54	12,506
55	12,875
56	13,242
57	13,608
58	13,976
59	14,345
60	14,712
61	15,079
62	15,448
63	15,816
64	16,184
65	16,550
66	16,920
67	17,287
68	17,654
69	18,022
70	18,391

■ 3. In § 723.15, revise introductory text of paragraph (b) to read as follows:

§ 723.15 Assessment of separate violations for each day.

\* \* \* \* \*

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,758 will be assessed for each day during which such failure to abate continues, except that:

\* \* \* \* \*

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 4. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 et seq., and 31 U.S.C. 3701.

■ 5. In § 724.14, revise the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

\* \* \* \* \*

(b) The penalty will not exceed \$18,391 for each violation. \* \* \*

PART 845—CIVIL PENALTIES

■ 6. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 et seq., 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. Revise the table in § 845.14 to read as follows:

§ 845.14 Determination of amount of penalty.

\* \* \* \* \*

TABLE 1 TO § 845.14

Points	Dollars
1	73
2	148
3	221
4	294
5	368
6	442
7	515
8	586
9	662
10	736
11	808
12	883
13	954
14	1,029
15	1,105
16	1,177
17	1,250
18	1,326
19	1,398
20	1,471
21	1,546

TABLE 1 TO § 845.14—Continued

Points	Dollars
22	1,619
23	1,692
24	1,764
25	1,839
26	2,207
27	2,575
28	2,940
29	3,170
30	3,678
31	4,045
32	4,414
33	4,782
34	5,150
35	5,517
36	5,885
37	6,254
38	6,621
39	6,988
40	7,355
41	7,726
42	8,092
43	8,458
44	8,827
45	9,195
46	9,563
47	9,930
48	10,299
49	10,666
50	11,033
51	11,400
52	11,770
53	12,138
54	12,506
55	12,875
56	13,242
57	13,608
58	13,976
59	14,345
60	14,712
61	15,079
62	15,448
63	15,816
64	16,184
65	16,550
66	16,920
67	17,287
68	17,654
69	18,022
70	18,391

■ 8. In § 845.15, revise introductory text of paragraph (b) to read as follows:

§ 845.15 Assessment of separate violations for each day.

\* \* \* \* \*

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,758 will be assessed for each day during which such failure to abate continues, except that:

\* \* \* \* \*

**PART 846—INDIVIDUAL CIVIL PENALTIES**

■ 9. The authority citation for part 846 continues to read as follows:

**Authority:** 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 10. In § 846.14, revise the first sentence of paragraph (b) to read as follows:

**§ 846.14 Amount of individual civil penalty.**

\* \* \* \* \*

(b) The penalty will not exceed \$18,391 for each violation. \* \* \*

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG-2022-0174]

RIN 1625-AA87

**Security Zone; Cooper River Bridge Run, Cooper River and Town Creek Reaches, Charleston, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone on certain waters of the Cooper River and Town Creek Reaches. This action is necessary to provide for the safety of life on these navigable waters near Charleston, South Carolina, during the Cooper River Bridge Run. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port Charleston (COTP) or a designated representative.

**DATES:** This rule is effective from 7:30 a.m. to 11 a.m., on April 2, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0174 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Chad Ray, Sector Charleston Waterways Management Division, Coast Guard; telephone (843) 740-3184, email [Chad.L.Ray@uscg.mil](mailto:Chad.L.Ray@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The primary justification for this action is that the Coast Guard was given short notice from the event sponsor. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of participants, spectators, and vessels transiting near the race area during the Cooper River Bridge 10–K Run event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary security zone must be established on April 2, 2022 to ensure the safety of participants, spectators, and vessels during the event.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Charleston has determined that potential hazards associated with the large number of participants and spectators during the run will be a safety and security concern. The purpose of the rule is to ensure the safety and security of participants, spectators, the general public, vessels and the navigable waters in the security zone before, during and after the scheduled race.

**IV. Discussion of the Rule**

This rule establishes a security zone from 7:30 a.m. to 11 a.m., on April 2, 2022. The security zone will cover certain navigable waters of the Cooper River and Town Creek Reaches in Charleston, South Carolina. The duration of the zone is intended to ensure the safety and security of the participants, spectators, and the general public during the scheduled 7:30 a.m. to 11 a.m. race. No vessel or person will be permitted to enter, transit through, anchor in or remain within the security zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the security zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the security zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

**V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

**A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following reasons: (1) The security zone only being enforced for a total of three and a half hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative; and (4) the Coast Guard