

TABLE I TO 201.1001—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS FOR VIOLATIONS FROM DECEMBER 10, 1996, THROUGH NOVEMBER 2, 2015—Continued

U.S. Code citation	Civil monetary penalty description	Date of violation and corresponding penalty				
		Dec. 10, 1996–Feb. 2, 2001 ⁱ	Feb. 3, 2001–Feb. 14, 2005 ⁱⁱ	Feb. 15, 2005–Mar. 3, 2009 ⁱⁱⁱ	Mar. 4, 2009–Mar. 5, 2013 ^{iv}	Mar. 6, 2013–Nov. 2, 2015 ^v
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii)).	For natural person	N/A	vii 750,000	800,000	900,000	950,000
	For any other person	N/A	vii 15,000,000	15,825,000	17,800,000	18,925,000

ⁱ Release Nos. 33–7361, 34–37912, IA–1596, IC–22310, dated November 1, 1996 (effective December 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201.

ⁱⁱ Release Nos. 33–7946, 34–43897, IA–1921, IC–24846, dated January 31, 2001 (effective February 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201.

ⁱⁱⁱ Release Nos. 33–8530, 34–51136, IA–2348, IC–26748, dated February 9, 2005 (effective February 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201.

^{iv} Release Nos. 33–9009, 34–59449, IA–2845, IC–28635, dated February 25, 2009 (effective March 3, 2009), previously found at 17 CFR 201.1004 and Table IV to Subpart E of Part 201.

^v Release Nos. 33–9387, 34–68994, IA–3557, IC–30408, dated February 27, 2013 (effective March 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201.

^{vi} Effective from July 21, 2010 (enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203), through March 5, 2013.

^{vii} Effective from July 30, 2002 (enactment of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204), through February 14, 2005.

By the Commission.
January 6, 2017.
Brent J. Fields,
Secretary.
[FR Doc. 2017–00421 Filed 1–13–17; 8:45 am]
BILLING CODE 8011–01–P

Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

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.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 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

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Office of Workers’ Compensation Programs

20 CFR Parts 702, 725, and 726

Wage and Hour Division

29 CFR Parts 500, 501, 530, 570, 578, 579, 801, and 825

Occupational Safety and Health Administration

29 CFR Part 1903

Employee Benefits Security Administration

29 CFR Part 2560, 2575, and 2590

Mine Safety and Health Administration

30 CFR Part 100

RIN 1290–AA31

Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2017

AGENCY: Employment and Training Administration, Office of Workers’ Compensation Programs, Office of the Secretary, Wage and Hour Division,

SUMMARY: The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced in its regulations, 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). The Inflation Adjustment Act requires the Department to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. The Inflation Adjustment Act provides that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Department’s 2017 annual adjustments for inflation to its civil monetary penalties, effective January 13, 2017.

DATES: This final rule is effective on January 13, 2017. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.

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 final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by

effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. The Department is required to publish an annual inflation adjustment no later than January 15, 2017, and by January 15 of each subsequent year.

On July 1, 2016, the Department published an IFR that established the initial catch-up adjustment for civil penalties that the Department administers and requested comments. See 81 FR 43430 (DOL IFR). Nine comments were received on the Employment and Training Administration, Wage and Hour Division, Occupational Safety and Health Administration, and Employee Benefit Security Administration sections of the IFR, and are discussed below.

This rule implements the annual inflation adjustment that the

Department is required by the Inflation Adjustment Act to publish by January 15, 2017 for civil monetary penalties assessed or enforced in the Department’s regulations.¹ The Inflation Adjustment Act provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Pursuant to the Inflation Adjustment Act, this final rule is published notwithstanding Section 553 of the APA.

II. Adjustment for 2017

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.² The Department first identified the most recent penalty amount, which was the amount established by the catch-up adjustment as set forth in the IFR published on July 1, 2016.

The Department is required to calculate the annual adjustment based on the Consumer Price Index for all Urban Consumers (CPI-U). Annual

inflation adjustments are based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year’s October CPI-U; in this case, the percent change between the October 2016 CPI-U and the October 2015 CPI-U. The cost-of-living adjustment multiplier for 2017, based on the Consumer Price Index (CPI-U) for the month of October 2016, not seasonally adjusted, is 1.01636.³ In order to complete the 2017 annual adjustment, the Department multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.01636, and rounded to the nearest dollar.

As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.⁴ Accordingly, for penalties assessed after January 13, 2017, whose associated violations occurred after November 2, 2015, the higher penalty amounts outlined in this rule will apply. The table below demonstrates the penalty amounts that apply:

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before January 13, 2017.	August 1, 2016 levels.
After November 2, 2015	After January 13, 2017	January 13, 2017 levels.

III. Discussion of Public Comments

Nine organizations filed responsive comments with the Department within the public comment period for the IFR. The Department received comments from the Center for Progressive Reform (CPR); Farmworker Justice; Contractors Risk Management, Inc.; the North Carolina Department of Labor; the National Association of Health Underwriters (NAHU); the Kentucky Labor Cabinet; the National Guestworker Alliance (NGA); the New Mexico Environment Department; and the Occupational Safety and Health State Plan Association (OSHSPA).

Comments were received on the Employment and Training Administration, Wage and Hour Division, Occupational Safety and Health Administration, and Employee Benefit Security Administration sections of the IFR. No comments were

received related to the Office of Workers’ Compensation Programs, Office of the Secretary, and Mine Safety and Health Administration sections.

The following discussion addresses the comments and the Department’s responses. The Department has reviewed and considered these comments, but found none of them required a change in the penalty levels or regulatory text.

A. Employment and Training Administration (20 CFR Part 655) and Wage and Hour Division (29 CFR Parts 500, 501, 530, 570, 578, 579, 801, 825)

In the IFR, the Department increased the civil monetary penalties enforced by Department’s Wage and Hour Division (WHD) under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Immigration and Nationality Act (INA) (specifically, the

H-2A, D-1, and H-1B visa programs), the Fair Labor Standards Act (FLSA) (including the child labor provisions), the Employee Polygraph Protection Act, and the Family and Medical Leave Act.⁵ The civil monetary penalties authorized by the INA’s D-1 and H-1B visa programs are reflected in the Employment and Training Administration’s regulations, title 20 of the Code of Federal Regulations (CFR), but are enforced by WHD. The Department increased these civil monetary penalties pursuant to the “catch-up” adjustment formula as specified in the Inflation Adjustment Act. The Department explained each increase in the preamble to the IFR.

The Department received two comments addressing the increase of civil monetary penalties under programs administered by the WHD. Farmworker Justice, a national advocacy

¹ Civil monetary penalties under the H-2B program are addressed separately.

² M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec 16, 2016).

³ OMB provided the year-over-year multiplier, rounded to 5 decimal points. *Id.* at 1.

⁴ Appendix 1 consists of a table that provides ready access to key information about each penalty.

⁵ The Department also increased 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, 29 CFR part 5 and 41 CFR part 50-201, which have been delegated to WHD for enforcement.

organization representing migrant and seasonal farmworkers, submitted a comment addressing civil monetary penalties under MSPA, H-2A, and FLSA.⁶ Farmworker Justice commented that while they were pleased that the civil monetary penalties under these programs had increased, the penalties remain “woefully inadequate to deter agricultural employers from violating labor laws and should be significantly increased.” Farmworker Justice recommended that all civil monetary penalties for these programs “be raised significantly in order to have an impact on the pervasive labor law violations in agriculture.” The National Guestworker Alliance (NGA), a membership organization representing contingent workers across labor sectors, submitted a comment addressing civil monetary penalties under the H-1B visa program.⁷ With respect to civil monetary penalties under the H-1B visa program, the NGA commented that while it supports the increases included in the IFR, “it believes that DOL should have increased the penal[ies]” to the “150 [percent] maximum allowed under the [Inflation Adjustment Act] to help ensure employer compliance with the regulation.”

The Department agrees that civil monetary penalties serve an important role in deterring violations of the programs administered by the Department. Indeed, the Inflation Adjustment Act is intended to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. See DOL IFR, 81 FR at 43431. However, the Department increased civil monetary penalties under the H-1B, H-2A, FLSA, and MSPA programs in the IFR pursuant to the Inflation Adjustment Act’s mandatory “catch-up” adjustment formula, which is specified in the statute and is based on inflation. For this “catch-up” adjustment, the Inflation Adjustment Act required 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 became the basis of the “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. See Inflation Adjustment Act, Sec. 701. This cap is triggered *only* where the relevant calculation results in a higher penalty amount; the Inflation Adjustment Act does not permit agencies to increase civil monetary penalties up to this cap where the specified calculation results in an increase lower than 150 percent of the November 2015 penalty amount. *Id.*

As explained in the preamble to the IFR, applying the “catch-up” formula required by the Inflation Adjustment Act, the civil monetary penalties under the FLSA, H-1B, H-2A, and MSPA were increased to the maximum amounts permissible under the Inflation Adjustment Act, none of which reached or exceeded the 150 percent cap. Accordingly, the Department may not further increase civil monetary penalties under these programs pursuant to the Inflation Adjustment Act, other than by making the subsequent annual adjustments for inflation.

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

In the IFR, the Department increased 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, including conforming edits to the agency’s State Plan regulations. The Department increased these civil monetary penalties pursuant to the “catch-up” adjustment formula as specified in the Inflation Adjustment Act. The Department explained each increase in the preamble to the IFR. The Department received four comments related to State Plans, and four comments related to the civil penalty adjustments.

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. There were four State Plan related comments submitted in response to the DOL IFR. One was from the Occupational Safety and Health State Plan Association (OSHSPA) and three from individual State Plans (North Carolina, Kentucky and New Mexico). Responses to these four comments are discussed below.

Section 18(c)(2) of the OSH Act requires that a State Plan “provides for the development and enforcement of

safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues. . . .” Prior to the July 1, 2016 publication of the IFR, the State Plan Indices of Effectiveness for initial approval stated that State Plans must “[p]rovide[] effective sanctions against employers who violate State standards and orders, such as those prescribed in the Act.” See 29 CFR 1902.4(c)(2)(xi) (2015). In the factors for determination of final approval status, the regulations require that, “[t]he State proposes penalties in a manner at least as effective as under the Federal program, including the proposing of penalties for first instance violations and the consideration of factors comparable to those required to be considered under the Federal program.” See 29 CFR 1902.37(b)(12).

Thus, OSHA-approved State Plans must have maximum and minimum⁸ penalty levels that are at least as effective as federal OSHA’s per Section 18 (c)(2) of the OSH Act; See 29 CFR 1902.4(c)(2)(xi); 1902.37(b)(12). It is OSHA’s long-standing position that “at least as effective,” in this context, means that State Plans must have maximum and minimum penalty levels that are at least as high as OSHA’s maximum and minimum penalty levels. Therefore, all State Plans must increase their maximum and minimum penalty levels to be at least as high as OSHA’s initial catch-up maximum and minimum penalty levels in 29 CFR 1903.15(d), and must thereafter increase these maximums and minimums based on inflation.

With the publication of the IFR, the location of OSHA’s maximum and minimum penalties was moved from Section 17 of the OSH Act to 29 CFR 1903.15(d). To make it clear where the OSHA penalty levels are located, OSHA amended 29 CFR 1902.4(c)(2)(xi) to now read that State Plans must “[p]rovide[] effective sanctions against employers who violated State standards and orders, such as those prescribed in the Act and 29 CFR 1903.15(d)” (emphasis added). This change was simply to add a reference to the new location of OSHA penalty levels, in 29 CFR 1903.15(d).

OSHSPA submitted a letter requesting that OSHA make clear that the amendment to 29 CFR 1902.4(c)(2)(xi) is

⁸ The penalties increased include the range of penalties for willful citations, which includes both a minimum and a maximum.

⁶ This comment also addressed civil money penalties under the Occupational Safety and Health Act (OSH Act), which is administered by the Occupational Safety and Health Administration; that portion of Farmworker Justice’s comment is addressed below.

⁷ This comment also addressed civil money penalties under the OSH Act; that portion of NGA’s comment is addressed below.

not intended to require State Plans to have an identical penalty structure for assessed penalties. As explained above, State Plans have long been required to have effective sanctions as prescribed in the OSH Act. The penalty levels in the OSH Act (Section 17) have historically been OSHA's maximum and minimum penalties, while OSHA's structure or practice for assessing penalties has been developed through policy and is currently contained in OSHA's Field Operations Manual. OSHA confirms that the amendment to § 1902.4(c)(2)(xi) refers only to the location of the new maximum and minimum penalty levels in 29 CFR 1903.15(d). The change to § 1902.4(c)(2)(xi) does not expand OSHA's scope of authority or control over State Plans' penalties, nor does it alter OSHA's obligation to analyze both State Plan maximum penalties and State Plan penalty assessment structures under the "at least as effective" lens.

The North Carolina Department of Labor submitted a comment that took issue with OSHA's amendment of 29 CFR 1902.4(c)(2)(xi), and was joined by Kentucky Labor Cabinet and the New Mexico Environment Department. The North Carolina State Plan contended that OSHA's amendment to 29 CFR 1902.4(c)(2)(xi) was in excess of the authority granted by the Bipartisan Budget Act of 2015's amendment to the Inflation Adjustment Act; not in conformance with the APA, 5 U.S.C. 553; and arbitrary, capricious, and an abuse of discretion.

The Inflation Adjustment Act directed OSHA to increase maximum and minimum penalties through an IFR issuing without prior notice and comment rather than a change to the OSH Act. OSHA has the inherent authority to make technical amendments to its regulations to conform to Congress's direction to increase its penalty levels. With the change to the location of penalty levels to 29 CFR 1903.15(d), OSHA needed to update the reference in 29 CFR 1902.4(c)(2)(xi) to point to both the Act and the new regulation. This change was merely the addition of a reference, or pointer, to increase clarity and transparency in the State Plan Indices of effectiveness.

The North Carolina, Kentucky and New Mexico State Plans argue that the change to 29 CFR 1902.4(c)(2)(xi) violated the APA because it was not issued through notice-and-comment rulemaking, and the good cause exception to notice-and-comment rulemaking is not applicable.

As noted by the North Carolina State Plan, the APA exception from notice and comment applies to regulations that

make minor technical amendments and non-substantive corrections. *See* p. 3. That comports with the APA language that notice and comment is not required where they are "impractical, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). The amendment to 29 CFR 1902.4(c)(2)(xi) fits within that exception because it is a minor, technical amendment that updated the reference to the location of OSHA maximum and minimum penalty levels. It is the "at least as effective" standard in OSH Act § 18 that requires State Plans to increase their maximum and minimum penalty levels, and the amendment to 29 CFR 1902.4(c)(2)(xi) only made clear to State Plans and all other stakeholders that the maximum and minimum penalty levels that State Plans are required to be at least as effective as, are now listed under 29 CFR 1903.15(d), and are no longer in OSH Act § 17. There is no need for notice and comment on that type of "pointer" reference. *See, e.g.,* Corrections and Technical Amendments to 16 OSHA Standards, 76 FR 80735 (Dec. 27, 2011) (updating cross-reference from "Section 101(14)" of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) to "Section 103(14)" after Congress amended CERCLA). Nonetheless, DOL did accept comments on the IFR, and several State Plans took advantage of that opportunity to file comments,

Further, the State Plan comments argue that the change to 29 CFR 1902.4(c)(2)(xi) was arbitrary, capricious, and an abuse of discretion under the APA because it is not based on reasoned analysis. The North Carolina State Plan comment argues that OSHA should present current data to support the requirement that State Plans increase penalties to the level assessed by OSHA effective August 1, 2016 in order to be deemed "at least as effective." Further, the North Carolina State Plan comment emphasizes that the "at least as effective" standard does not require State Plans to have programs identical to OSHA's. New Mexico joined in arguing that assessed penalty levels and injury rates are not correlated and thus penalty levels should not be part of the "at least as effective" analysis.

In the Inflation Adjustment Act, Congress found that "(1) the 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) the impact of many civil monetary penalties has been and is diminished

due to the effect of inflation." *See* 28 U.S.C. 2461 note, § 2(a). This finding is as applicable to State Plan penalties as it is to federal penalties.

The regulations that OSHA adopted (29 CFR 1903.15(d)) address only the maximum and minimum penalty levels—they do not address penalties finally assessed or the methodology involved in calculating assessed penalties. The latter are matters to be determined under the "at least as effective" standard, on a case-by-case basis with each State Plan.

OSHA has an obligation to ensure that State Plans continue to maintain maximum and minimum penalty levels that are at least as effective as OSHA's. OSHA agrees that the "at least as effective" standard does not require State Plans to be identical to OSHA. However, as acknowledged by the OSHSPA comment, historically, State Plans have matched OSHA's maximum and minimum penalties identically. In 1990, when Congress last increased OSHA's maximum and minimum penalty levels, all State Plans adopted identical penalty levels, resulting in the \$7,000/\$70,000 penalty levels in effect for 25 years for both OSHA and the State Plans. OSHA recognizes that the August 1, 2016 increase in OSHA's maximum and minimum penalty levels is complicated by the requirement that the penalties levels increase annually, based on the cost-of-living adjustment, but that does not mean that State Plans do not have to increase their maximum and minimum penalty levels. OSHA will assist the State Plans to make these necessary changes occur. OSHA's position has been and continues to be that State Plans must have maximum and minimum penalties that are at least as effective as OSHA's.

The IFR updated § 1903.15 to read in part, "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." In its comments, Contractors Risk Management asked whether this means that the employer will be notified if there are no penalties proposed or no citations issued. At the closing of the inspection process, OSHA conducts a closing conference with the employer and the employee representatives to discuss the findings of the inspection. The compliance officer discusses possible courses of action an employer may take following an inspection,

which could include an informal conference with OSHA or contesting citations and proposed penalties where citations and penalties are proposed. The compliance officer also discusses consultation services and employee rights. This closing conference is held regardless of whether citations and penalties are proposed.

The IFR added § 1903.15(d) to provide the adjusted civil penalties for penalties proposed on or after August 1, 2016. Contractors Risk Management expressed concern about a case being opened before August 1, but higher penalty levied because the time OSHA takes to complete the case goes beyond August 1. The Inflation Adjustment Act 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” See Public Law 114–74 at § 701. OSHA attempted to complete open cases prior to the August 1 conversion date. However, in some cases, citations for inspections opened prior to August 1st were not issued until after August 1, and enhanced penalties were proposed under the new rules. OSHA made every effort to inform employers, through outreach, use of our Web site, and notices to affected employers, of the changes to our penalties and the potential impact on the inspection.

The NGA commented that it supports the increases in penalties for employer violations of the OSH Act, but believes that the Department should have increased the penalties to the 150% maximum allowed under Inflation Adjustment Act to help ensure employer compliance with the law. Farmworker Justice similarly commented that civil monetary penalties under the OSH Act should be increased. The Department agrees that civil monetary penalties serve an important role in deterring violations of the programs administered by the Department. However, the Department increased civil monetary penalties under the OSH Act in the IFR pursuant to the Inflation Adjustment Act’s mandatory “catch-up” adjustment formula, which is specified in the statute and is based on inflation. For this “catch-up” adjustment, the Inflation Adjustment Act required 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 became the basis of the “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. See Inflation Adjustment, Sec. 701. This cap is triggered *only* where the relevant calculation results in a higher penalty amount; the Inflation Adjustment Act does not permit agencies to increase civil monetary penalties up to this cap where the specified calculation results in an increase lower than 150 percent of the November 2015 penalty amount. *Id.* By applying the “catch-up” formula required by the Inflation Adjustment Act, the civil monetary penalties under the OSH Act were increased to the maximum amounts permissible under the Inflation Adjustment Act, none of which reached or exceeded the 150 percent cap.

The Center for Progressive Reform commented that it applauds the agency for adjusting the penalties to the maximum amount permitted by the Inflation Adjustment Act, but it encourages OSHA to revise its informal settlement policies. In response to the penalty adjustments mandated by Congress, OSHA revised Chapter 6 of its Field Operations Manual. In revising the guidance, OSHA wanted to be consistent with current procedures and ensure that penalties were impactful. However, we were also mindful of the impact that these changes may have had on small businesses. To offset any undue impact, OSHA created an additional size category for businesses with 1–10 employees, and now offers a reduction of 70 percent for those smallest businesses. The informal settlement policy remains the same, but OSHA is closely monitoring the influence that the new penalties have on our contest rates, etc. to see where adjustments, if needed, may be appropriate.

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

In the IFR, the Department increased the civil monetary penalties administered by the Employee Benefits Security Administration to enforce provisions of the Employee Retirement Income Security Act of 1974, as amended, (ERISA). The Department increased these civil monetary penalties as required by the “catch-up” adjustment formula specified in the Inflation Adjustment Act. Minor modifications were made to 29 CFR 2575.3 to clarify that future inflation adjustments to ERISA civil monetary

penalties would be made by notice in the **Federal Register** without amending the code of federal regulations each year to reflect an increase in the penalty amount.

The Department received one comment letter regarding the adjustment of the ERISA civil monetary penalties under the IFR. The commenter, the National Association of Health Underwriters (NAHU), stated that “the formula used to increase penalties was fairly applied in the IFR.” NAHU, however, questioned the “decision to impose increased penalties on employers at this time” due to the increased cost of compliance and reporting responsibilities placed on group health plans by the Patient Protection and Affordable Care Act (ACA). NAHU expressed concern “that increasing the potential penalties could have a detrimental impact on an employer’s potential willingness to offer group benefits, particularly for smaller employers that have not previously offered coverage.” Most ERISA civil monetary penalties affecting group health plans are expressed in terms of “up to” or “not more than” a maximum penalty. The Department did not automatically impose the maximum penalty in the past and has no plans at this time to change its enforcement policy to maximize penalty collections following the catch-up adjustment. It is the view of the Department that neither the catch-up adjustment nor any subsequent adjustment will have the detrimental impact on group health plans suggested by NAHU. Accordingly, the unverifiable social cost of the catch-up adjustment postulated by NAHU’s comment does not outweigh the benefits of increasing the ERISA civil monetary penalties by the otherwise required amount.

Section 4(a) of the Inflation Adjustment Act states that “[n]ot later than July 1, 2016, and not later than January 15 of every year thereafter,” the head of each agency shall adjust civil monetary penalties in accordance with section 4(b). Section 4(b)(1) states that “for purposes of the first adjustment” (*i.e.*, the catch-up adjustment) the “head of each agency shall adjust the civil monetary penalties by IFR” that “shall take effect no later than August 1, 2016.” Since the operative word of the statute is “shall,” the Department did not have the discretion to delay adjustment of the ERISA civil monetary penalties beyond August 1, 2016, except as otherwise provided by section 4(c) of the Inflation Adjustment Act.

Under section 4(c), an agency could not delay or otherwise reduce the catch-up adjustment unless: (1) After

publishing a notice of proposed rulemaking in the **Federal Register**, the agency determines that the increase in the penalty or penalty range would have a negative economic impact, or that the social costs of increasing the penalty would outweigh the benefits, and (2) OMB concurred with that determination. OMB advised that an agency seeking OMB's concurrence to a reduction of the required catch-up adjustment must submit the associated notice of proposed rulemaking to the Office of Information and Regulatory Affairs (OIRA) of OMB for review by May 2, 2016.⁹ OMB also advised that its concurrence to a reduction of the catch-up adjustment would be "rare."¹⁰ The Department decided not to pursue a reduction in the increase of any of the ERISA penalties, because, in the Department's view, there was no negative economic impact or a verifiable social cost resulting from the catch-up adjustment. Since the Department did not submit the requisite notice of proposed rulemaking to OIRA by May 2, 2016, the Department arguably does not have the authority to reduce a required catch-up adjustment to an ERISA penalty under section 4(c). Even if the Department currently has the authority to reduce a catch-up adjustment under section 4(c), the one comment received by the Department regarding ERISA penalties did not provide sufficient evidence of negative economic impact or social cost for the Department to seek a reduction of the increased ERISA penalties resulting from the catch-up adjustment.

V. 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. Administrative Procedure Act

The Inflation Adjustment Act provides that agencies shall annually adjust civil monetary penalties for inflation notwithstanding Section 553 of the APA. Additionally, the Inflation Adjustment Act provides a nondiscretionary cost-of-living formula for annual adjustment of the civil monetary penalties. For these reasons, the requirements in sections 553(b), (c), and (d) of the APA, relating to notice

and comment and requiring that a rule be effective 30 days after publication in the **Federal Register**, are inapplicable.

VI. 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 Department has determined that this final rule is not a "significant" regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for the regulated community to comply with the laws enforced by the Department, and not allowing the incentive to be diminished by inflation.

Executive Order 13563 directs agencies 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

This final rule is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to Section 553 of the APA. In that context, Congress has already determined that any possible increase in costs is justified by the overall benefits of such adjustments. This final rule makes only the statutory changes outlined herein; thus there are no alternatives or further analysis required by E.O. 13563.

VII. 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 APA, 5 U.S.C. 553(b). This final rule is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to Section 553 of the APA. Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this rule. Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

VIII. Other Regulatory Considerations

A. *The Unfunded Mandates Reform Act of 1995*

Because the rule simply adjusts for inflation, it does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than \$100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. *Executive Order 13132: Federalism*

Section 18 of the OSHA 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. OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as federal OSHA's per Section 18 (c)(2) of the OSHA Act; 29 CFR 1902.4(c)(2)(xi); 1902.37(b)(12). State Plans are required to increase their penalties in alignment with OSHA's penalty increases 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)

⁹ *See*, OMB Mem. M-16-06 (Feb. 24, 2016), available at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

¹⁰ *Id.*

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 final rule 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 final rule 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 final rule 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 final rule 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 final rule 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 final rule 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 final rule 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 final rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This final rule 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

Child labor, Law enforcement, Penalties.

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 Part 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.
For the reasons set out in the preamble, 20 CFR chapters V and VI, 29 CFR chapters V, XVII, and XXV, and 30 CFR chapter I are amended as follows.

Department of Labor

Employment and Training Administration

Title 20—Employees’ Benefits

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

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); 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. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

§§ 655.620, 655.801, and 655.810 [Amended]

■ 2. In the table below, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 655.620(a)	\$8,908	\$9,054
§ 655.801(b)	7,251	7,370
§ 655.810(b)(1) introductory text	1,782	1,811
§ 655.810(b)(2) introductory text	7,251	7,370
§ 655.810(b)(3) introductory text	50,758	51,588

Department of Labor
Office of Workers’ Compensation Programs

PART 702—ADMINISTRATION AND PROCEDURE

■ 3. The authority citation for part 702 continues 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.

§§ 702.204, 702.236, and 702.271 [Amended]

■ 4. In the table below, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 702.204	\$22,587	\$22,957.
§ 702.204	August 1, 2016	January 13, 2017.
§ 702.236	\$275	\$279.
§ 702.236	August 1, 2016	January 13, 2017.
§ 702.271(a)(2)	August 1, 2016	January 13, 2017.
§ 702.271(a)(2)	\$2,259	\$2,296.
§ 702.271(a)(2)	\$11,293	\$11,478.

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

■ 5. The authority citation for part 725 continues 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.

§ 725.621 [Amended]

■ 6. In § 725.621, amend paragraph (d) by removing “August 1, 2016” and adding in its place “January 13, 2017”

and by removing “\$1,375” and adding in its place “\$1,397”.

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

■ 7. The authority citation for part 726 continues 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.

§ 726.302 [Amended]

■ 8. In the table below, for each paragraph indicated in the left column,

remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 726.302(c)(2)(i)	August 1, 2016	January 13, 2017.
§ 726.302(c)(2)(i)	\$134	\$136.
§ 726.302(c)(2)(i)	268	272.
§ 726.302(c)(2)(i)	402	409.
§ 726.302(c)(2)(i)	535	544.
§ 726.302(c)(4)	August 1, 2016	January 13, 2017.
§ 726.302(c)(4)	\$134	\$136.
§ 726.302(c)(5)	August 1, 2016	January 13, 2017.
§ 726.302(c)(5)	\$402	\$409.
§ 726.302(c)(6)	August 1, 2016	January 13, 2017.
§ 726.302(c)(6)	\$2,750	\$2,795.

**Department of Labor
Wage and Hour Division
Title 29—Labor**

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 9. The authority citation for part 500 continues 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.

§ 500.1 [Amended]

■ 10. In § 500.1, amend paragraph (e) by removing “\$2,355” and adding in its place “\$2,394”.

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

■ 11. The authority citation for part 501 continues 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.

§ 501.19 [Amended]

■ 12. In the table below, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 501.19(c) introductory text		\$1,658
§ 501.19(c)(1)	\$1,631	5,581
§ 501.19(c)(2)	5,491	55,263
§ 501.19(c)(4)	54,373	110,524
§ 501.19(d)	108,745	5,581
§ 501.19(e)	5,491	16,579
§ 501.19(f)	16,312	16,579
§ 501.19(f)	16,312	16,579

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 13. The authority citation for part 530 continues 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 sec. 701, 129 Stat 584.

■ 14. In § 530.302, amend paragraph (a) by removing “\$989” and adding in its place “\$1,005” and revise paragraph (b) to read as follows:

§ 530.302 Amounts of civil penalties.

* * * * *

(b) The amount of civil money penalties shall be determined per affected homemaker 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 homemaker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	\$20–201	\$201–402	\$402–1,005
Monetary violations	20–201	201–402	
Employment of homeworkers without a certificate		201–402	402–1,005
Other violations of statutes, regulations or employer assurances	20–201	201–402	402–1,005

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

■ 15. The authority citation for Subpart G of part 570 continues 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.

§ 570.140 [Amended]

■ 16. In § 570.140, amend paragraph (b)(1) by removing “\$12,080” and adding in its place “\$12,278” and paragraph (b)(2) by removing “\$54,910” and adding in its place “\$55,808”.

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

■ 17. The authority citation for part 578 continues 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.

§ 578.3 [Amended]

■ 18. In § 578.3, amend paragraph (a) by removing “\$1,894” and adding in its place “\$1,925”.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 19. The authority citation for part 579 continues 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.

§ 579.1 [Amended]

■ 20. In the table below, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 579.1(a)(1)(i)(A)	\$12,080	\$12,278
§ 579.1(a)(1)(i)(B)	54,910	55,808
§ 579.1(a)(2)	1,894	1,925

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

■ 21. The authority citation for part 801 continues 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 sec. 701, 129 Stat 584.

§ 801.42 [Amended]

■ 22. In § 801.42, amend paragraph (a) by removing “\$19,787” and adding in its place “\$20,111”.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 23. The authority citation for part 825 continues 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 sec. 701.

§ 825.300 [Amended]

■ 24. In § 825.300 amend paragraph (a)(1) by removing “\$163” and adding in its place “\$166”.

**Department of Labor
Occupational Safety and Health Administration
Title 29—Labor**

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 25. The authority citation for part 1903 continues 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).

§ 1903.15 [Amended]

■ 26. In the table below, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 1903.15(d) introductory text	on or after August 1, 2016.	after January 13, 2017.
§ 1903.15(d)(1)	\$8,908	\$9,054.
§ 1903.15(d)(1)	124,709	126,749.
§ 1903.15(d)(2)	124,709	126,749.
§ 1903.15(d)(3)	12,471	12,675.
§ 1903.15(d)(4)	12,471	12,675.
§ 1903.15(d)(5)	12,471	12,675.
§ 1903.15(d)(6)	12,471	12,675.

Department of Labor
Employee Benefits Security
Administration
Title 29—Labor

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

■ 27. The authority citation for subpart A of 29 CFR part 2575 continues 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).

■ 28. Revise § 2575.3 to read as follows:

§ 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, as required by the Inflation Adjustment Act, the civil monetary penalties described in § 2575.2 for violations occurring on or after November 2, 2015, and any future civil monetary penalties enforceable by the Secretary under title I of ERISA. The Secretary shall publish such annual adjustments in the **Federal Register** notwithstanding section 553 of the Administrative Procedure Act. Future penalties or adjustments to the amount of the penalty that are enacted by statute or regulation (other than an adjustment for inflation under the Inflation Adjustment Act) 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 date notice of the annual inflation adjustment is published in the **Federal Register**.

Department of Labor
Mine Safety and Health Administration
Title 30—Mineral Resources

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

■ 29. The authority citation for part 100 continues 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 sec. 701;

■ 30. In § 100.3, amend paragraph (a)(1) introductory text by removing “\$68,300” and adding in its place “\$69,417” and in paragraph (g) by revising Table XIV—Penalty Conversion Table to read as follows:

TABLE XIV—PENALTY CONVERSION TABLE

Points	Penalty (\$)
60 or fewer	\$129
61	140
62	151
63	165
64	178
65	193
66	209
67	227
68	245
69	266
70	288
71	312
72	339
73	367
74	396
75	430
76	467
77	504
78	547
79	593
80	642
81	695
82	753
83	816
84	884
85	958
86	1,038
87	1,123
88	1,218
89	1,319
90	1,429
91	1,547
92	1,676
93	1,815
94	1,967
95	2,131
96	2,308
97	2,500
98	2,709
99	2,934
100	3,179
101	3,443
102	3,730
103	4,041
104	4,377

TABLE XIV—PENALTY CONVERSION TABLE—Continued

Points	Penalty (\$)
105	4,742
106	5,137
107	5,565
108	6,029
109	6,531
110	7,075
111	7,663
112	8,303
113	8,994
114	9,743
115	10,554
116	11,433
117	12,385
118	13,417
119	14,535
120	15,745
121	17,057
122	18,477
123	20,016
124	21,684
125	23,488
126	25,445
127	27,565
128	29,861
129	32,348
130	35,042
131	37,960
132	41,122
133	44,546
134	48,099
135	51,652
136	55,206
137	58,758
138	62,311
139	65,864
140 or more	69,417

* * * * *

§§ 100.4 and 100.5 [Amended]

■ 31. In the table below, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 100.4(a)	\$2,277	\$2,314
§ 100.4(b)	4,553	4,627
§ 100.4(c) introductory text	5,692	5,785
§ 100.4(c) introductory text	68,300	69,417
§ 100.5(c)	7,399	7,520
§ 100.5(d)	313	318
§ 100.5(e)	250,433	254,530

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

Agency	Law	Name/description	CFR citation	2016		2017	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Regular Assessment	30 CFR 100.3(A) .....	.....	\$68,300 .....	.....	\$69,417.
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(G)	\$127	68,300	\$129	69,417.
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)	2,277	.....	2,314	.....
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)	4,553	.....	4,627	.....
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)	5,692	68,300	5,785	69,417.
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) .....	.....	7,399 .....	.....	7,520.
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(D) .....	.....	313 .....	.....	318.
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e) .....	.....	250,433 .....	.....	254,530.
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) .....	.....	28 .....	.....	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) .....	.....	2,063 .....	.....	\$2,097.
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) .....	.....	1,632 .....	.....	1,659.
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) .....	.....	1,502 .....	.....	1,527.
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) .....	.....	147 per day, not to exceed \$1,472 per request.	.....	149 per day, not to exceed \$1,496 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) .....	.....	131 .....	.....	133.

Agency	Law	Name/description	CFR citation	2016		2017	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (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)		1,296		1,317.
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)(l)—each employee a separate violation.	29 CFR 2575.2(h)		110		112.
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)		110		112.
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)		110		112.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.2(j)(2)	2,745		2,790.	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.2(j)(3)	16,473		16,742.	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.2(j)(4)		549,095		558,078.
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)		100		102.
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)		15,909		16,169.
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)		1,087		1,105.
OSHA	Occupational Safety and Health Act.	Serious Violation	29 CFR 1903.15(d)(3)		12,471		12,675.

Agency	Law	Name/description	CFR citation	2016		2017	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
OSHA	Occupational Safety and Health Act.	Other-Than-Serious	29 CFR 1903.15(d)(4)		12,471		12,675.
OSHA	Occupational Safety and Health Act.	Willful	29 CFR 1903.15(d)(1)	8,908	124,709	9,054	126,749.
OSHA	Occupational Safety and Health Act.	Repeated	29 CFR 1903.15(d)(2)		124,709		126,749.
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(6)		12,471		12,675.
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5)		12,471		12,675.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1)		163		166.
WHD	Fair Labor Standards Act	FLSA	29 CFR 578.3(a)		1,894		1,925.
WHD	Fair Labor Standards Act	Child Labor	29 CFR 579.1(a)(2)		1,894		1,925.
WHD	Fair Labor Standards Act	Child Labor	29 CFR 570.140(b)(1)		12,080		12,278.
WHD	Fair Labor Standards Act	Child Labor	29 CFR 579.1(a)(1)(i)(A)		12,080		12,278.
WHD	Fair Labor Standards Act	Child Labor that causes serious injury or death.	29 CFR 570.140(b)(2)		54,910		55,808.
WHD	Fair Labor Standards Act	Child Labor that causes serious injury or death.	29 CFR 579.1(a)(1)(i)(B)		54,910		55,808.
WHD	Fair Labor Standards Act	CL willful or repeated that causes serious injury or death.	29 CFR 570.140(b)(2); 29 CFR 579.1(a)(1)(i)(B).		109,820		111,616.
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)		2,355		2,394.
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1)		1,782		1,811.
WHD	Immigration & Nationality Act.	H1B retaliation	20 CFR 655.801(b)		7,251		7,370.
WHD	Immigration & Nationality Act.	H1B willful or discrimination.	20 CFR 655.810(b)(2)		7,251		7,370.
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3)		50,758		51,588.
WHD	Immigration & Nationality Act.	D-1	20 CFR 655.620(a)		8,908		9,054.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.5(b)(2)		25		25.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)		25		25.
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50-201.3(e)		25		25.
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)		19,787		20,111
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)		1,631		1,658.
WHD	Immigration & Nationality Act.	H2A willful or discrimination.	29 CFR 501.19(c)(1)		5,491		5,581.
WHD	Immigration & Nationality Act.	H2A Safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)		54,373		55,263.
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(4)		108,745		110,524.
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)		5,491		5,581.
WHD	Immigration & Nationality Act.	H2A displacing a US worker.	29 CFR 501.19(e)		16,312		16,579.
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker.	29 CFR 501.19(f)		16,312		16,579.
WHD	Fair Labor Standards Act	Home Worker	29 CFR 530.302(a)		989		1,005.
WHD	Fair Labor Standards Act	Home Worker	29 CFR 530.302(b)	20	989	20	1,005.
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		22,587		22,957.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments.	20 CFR 702.236		275		279.
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)	2,259	11,293	2,296	11,478.
OWCP	Black Lung Benefits Act	Failure to report termination of payments.	20 CFR 725.621(d)		1,375		1,397.
OWCP	Black Lung Benefits Act	Failure to file required reports.	20 CFR 725.621(d)		1,375		1,397.

Agency	Law	Name/description	CFR citation	2016		2017	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits.	20 CFR 726.300 .....	.....	2,500 .....	.....	2,541.
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) ...	134 .....	.....	136	
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits for mines with 25–50 employees.	20 CFR 726.302(c)(2)(i) ...	268 .....	.....	272	
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits for mines with 51–100 employees.	20 CFR 726.302(c)(2)(i) ...	402 .....	.....	409	
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits for mines with more than 100 employees.	20 CFR 726.302(c)(2)(i) ...	535 .....	.....	544	
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits after 10th day of notice.	20 CFR 726.302(c)(4)	134 .....	.....	136	
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5)	402 .....	.....	409	
OWCP	Black Lung Benefits Act ...	Failure to secure payment of benefits.	20 CFR 726.302(c)(5) .....	.....	2,750 .....	.....	2,795.

Signed at Washington, DC this 9th day of January, 2017.

Thomas E. Perez,

Secretary, U.S. Department of Labor.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9810]

RIN 1535–BN06

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations effecting the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The final regulations address the length of time during which a RIC or a REIT may be subject to corporate level tax on certain dispositions of property. The final regulations affect RICs and REITs.

DATES: *Effective Date:* These regulations are effective January 18, 2017.

Applicability Dates: For dates of applicability, see § 1.337(d)–7(g)(2)(iii).

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones, (202) 317–5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On June 8, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (TD 9770) under section 337(d) (temporary regulations) in the **Federal Register** (81 FR 36793) concerning certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs). A notice of proposed rulemaking cross-referencing the temporary regulations (REG–126452–15) (proposed regulations) was published in the **Federal Register** (81 FR 36816) on the same day. A correction to the temporary regulations was published in the **Federal Register** (81 FR 41800) on June 28, 2016. The Treasury Department and the IRS received one written comment in response to the proposed regulations. The comment requested a public hearing, and a hearing was held on November 9, 2016. After consideration of the written comment and the comments made at the public hearing, the proposed regulations are adopted in part and as amended by this Treasury decision, and the corresponding temporary regulations are removed in part. The revisions adopted by this Treasury decision are discussed below.

Summary of Comments and Explanation of Revisions

The comment requested that the temporary regulations and the proposed regulations with respect to the

recognition period be immediately withdrawn and the recognition period with respect to REITs be defined with reference to the recognition period of section 1374(d)(7), which is currently a five-year period as a result of section 127(a) of the Protecting Americans Against Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422. The comment asserted that the change to the length of the recognition period in the temporary regulations and the proposed regulations was inconsistent with Congress’s intent in the PATH Act and with prior administrative guidance. On October 18, 2016, the Chairmen and Ranking Members of the Ways and Means Committee of the U.S. House of Representatives and the Finance Committee of the U.S. Senate addressed a letter to the Secretary of the Treasury stating that the recognition period in the temporary regulations and the proposed regulations was inconsistent with congressional intent and the longstanding practice of treating REITs and RICs as having the same built-in gain recognition period as S corporations, currently five years. The Chairmen and Ranking Members also asked that the temporary regulations and the proposed regulations be modified to provide that REITs, RICs and S corporations are all subject to the same five-year built-in gain recognition period in order to be consistent with congressional intent and longstanding practice.