

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

HENRY MCMASTER, in his official capacity as
Governor of the State of South Carolina, and
SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR;
MARTIN J. WALSH, in his official capacity as
Secretary of Labor; OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION; and DOUGLAS
PARKER, in his official capacity as Assistant
Secretary for Occupational Safety and Health,

Defendants.

Civil Action No.: 3:22-cv-02603-SAL

**Supplemental Authority
in Support of
Motion for Preliminary Injunction
and in Opposition to
Motion to Dismiss**

Plaintiffs submit this Supplemental Authority in support of their Motion for Preliminary Injunction (ECF No. 8) and in opposition to Defendants' Motion to Dismiss (ECF No. 20).

The Department of Labor issued the 2023 Adjustment on January 13, 2023. *See* Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023, 88 Fed. Reg. 2210 (Jan. 13, 2023) (attached as Ex. A). The 2023 Adjustment, like the previous adjustments, is a "Final rule," *id.* at 2210, and is essentially identical to previous annual adjustments in substance, *see, e.g., id.* at 2213 ("State Plans are required to increase their penalties in alignment with OSHA's penalty increases to maintain at least as effective penalty levels."). The federal penalties for 2023 increased by more than \$11,000 for willful or repeated violations—from \$145,027 to \$156,259. *Id.* at 2220.

The same day the Department of Labor issued the 2023 Adjustment, OSHA's State Plan Application formally notified the S.C. Department of Labor, Licensing & Regulation that "the

Department of Labor [had] published a Federal Register notice on the Final Rule on the Implementation of the 2023 Annual Adjustment to Civil Penalties for Inflation, effective 01/15/2023.” Decl. of Gwen Thomas, Ex. 1. OSHA directed the State Plan to declare by March 15, 2023, whether the State Plan would adopt the new federal civil penalty amounts as the amounts for state civil penalties. OSHA further demanded that the State Plan increase the state civil penalties to match the federal civil penalties by July 15, 2023.

OSHA’s communication about that the Department of Labor’s latest “Final rule” strongly supports the conclusion that the Court has jurisdiction to decide Plaintiffs’ claims. *First*, in the email, OSHA called the 2023 Adjustment a “Final Rule”—four times, in fact. *See id.* Contrary to Defendants’ suggestion during the December 2, 2022 hearing, OSHA’s description of the “Final Rule” in its email wasn’t based on or constrained by predetermined options in a drop-down menu for classifying a publication in the Federal Register. Instead, OSHA’s notice (and demand) to the State Plan reflects OSHA’s own characterization of the publication: Like the 2022 Adjustment, it’s a “Final Rule.” There is no reason not to take OSHA at its word that the annual adjustment is a “final rule.” *Cf.* 5 U.S.C. § 551(13) (“agency action” includes an “agency rule”).

Second, the 2023 Adjustment is subject to challenge under the APA, just like the 2022 Adjustment was when Plaintiffs filed their Complaint. *See* 5 U.S.C. § 704. As Defendants themselves explained, final agency action must be “the consummation” of the decisionmaking process and a decision by which “obligations have been determined.” ECF No. 19, at 17 (quoting *Nat’l Veterans Legal Servs. Program v. United States Dep’t of Def.*, 990 F.3d 834, 840 (4th Cir. 2021)). The 2023 Adjustment, again like its predecessor, checks both boxes. It is the final step in OSHA’s process of mandating that the State Plan increase its civil penalties in the new year. OSHA’s notice says as much: The 2023 Adjustment “imposes additional or more stringent

requirements on employers than existing OSHA standards.” Decl. of Gwen Thomas, Ex. 1. In other words, the 2023 Adjustment is the first (and only) time that OSHA has required the State Plan to set its civil penalties at \$156,259 and \$15,625 (depending on the type of violation), which means the 2023 Adjustment has an “immediate and practical” impact on the State Plan. ECF No. 25, at 6 (quoting *Golden & Zimmerman, LLC v. Domenech*, 599 F.3d 426, 433 (4th Cir. 2010)). This Adjustment is therefore not simply “restating” a previous mandate, as Defendants described the annual adjustments. ECF No. 19, at 16.

If Plaintiffs cannot challenge the current adjustment, their only recourse is to wait for OSHA to begin proceedings to revoke the State Plan after the State does not increase its civil penalties. But forcing Plaintiffs into that situation is precisely what the Supreme Court has said is not required. After all, courts “do not require plaintiffs to bet the farm by taking the violative action before testing the validity of the law.”* *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 490 (2010) (cleaned up).

* To the extent the Court believes either an amended complaint challenging the 2023 Adjustment or a supplemental motion for preliminary injunction is necessary (or may become necessary after the expiration of one or both of OSHA’s upcoming, self-imposed deadlines), Plaintiffs are willing to file one. That said, an amended complaint would change nothing other than the year of the challenged adjustment, the cite to federal register, and the current amount of the federal civil penalties OSHA seeks to impose on the State Plan. *Cf. Cnty. Bd. of Arlington Cnty., Va. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 256 (4th Cir. 2021) (refusing to adopt a “position would elevate form over substance”). Requiring annual amended complaints to track OSHA’s penalty increases each year would also run the risk of requiring Plaintiffs to amend while dispositive motions are pending or even after trial while the Court has the case under advisement. The Court should therefore proceed to decide Plaintiffs’ Motion for Preliminary Injunction, which seeks relief that would encompass the 2023 Adjustment without any amended pleadings. *See* ECF No. 8, at 1 (seeking order preliminarily enjoining Defendants from “[r]equiring the State Plan to impose or enforce civil penalties identical to the federal penalties provided in any prior or future annual inflation adjustments”).

Respectfully submitted,

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February 14, 2023
Columbia, South Carolina

ULC 30:2022, *Standard for Safety Metallic and Nonmetallic Safety Cans for Flammable and Combustible Liquids*, meets the requirements of the exception to rulemaking under the PFCSA. Section 18 of UL 30:2022 contains effective performance requirements for flame mitigation devices in safety cans that impede the propagation of flame into the container; the standard was in effect before June 27, 2022; and the standard was developed by UL, which, like ASTM International, is an ANSI-accredited standards developer and is experienced in the development of consumer product voluntary standards. 15 U.S.C. 2056d(b)(3)(A). Based on these findings, the Commission determines that rulemaking is not required under the PFCSA for portable fuel containers that are safety cans sold empty, because section 18 of UL 30:2022 meets the requirements of the PFCSA.

D. Publication of Notice of Commission Determinations

The Commission is publishing this notice of Commission determinations in the **Federal Register**, as required under section 2056d(b)(3)(B) of the PFCSA. The three portable fuel container voluntary standards will become effective as mandatory consumer product safety rules on July 12, 2023. 15 U.S.C. 2056d(b)(4). The Commission may in the future issue a direct final rule to incorporate the voluntary standards into the Code of Federal Regulations.

V. Effect of Commission Determinations Regarding Portable Fuel Container Voluntary Standards

Under the PFCSA, because the Commission has determined that the three voluntary standards discussed above, collectively covering the two known classes of portable fuel containers, meet the requirements for the exception to the rulemaking requirement, the requirements of those voluntary standards shall be treated as consumer product safety rules promulgated under section 9 of the CPSA (15 U.S.C. 2058), beginning on the date that is the later of 180 days after publication of the Commission's determination, or the effective date contained in the voluntary standard. 15 U.S.C. 2056d(b)(4). In this instance, the publication of this notice is the later of the two possible statutory dates. Therefore, portable fuel containers manufactured after July 12, 2023 must comply with the requirements of either ASTM F3429/F3429M–20, ASTM F3326–21, or section 18 of UL 30:2022, as applicable. Specifically, portable fuel

containers sold pre-filled are required to comply with the requirements of ASTM F3429/F3429M–20. Portable fuel containers sold empty (that are not safety cans) are required to comply with the requirements of ASTM F3326–21. Safety cans are required to meet the requirements of either ASTM F3326–21 or section 18 of UL 30:2022.

VI. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. 15 U.S.C. 2063(a)(1). Under the PFCSA, because of the Commission's determinations, ASTM F3429/F3429M–20, ASTM F3326–21, and section 18 of UL 30:2022, are considered consumer product safety rules under the CPSA. Therefore, portable fuel containers manufactured after July 12, 2023, are subject to the testing and certification requirements of section 14(a)(1) of the CPSA.

VII. Public Access to Portable Fuel Containers Voluntary Standards

ASTM F3429/F3429M–20, ASTM F3326–21, and UL 30:2022 are available to the public for review, free of charge, as described below.

For free-of-charge, read-only online access to ASTM F3429/F3429M–20:

- Access ASTM's CPSC reading room at: <http://www.astm.org/cpsc.htm>.
- Search for ASTM F3429.

Note: In the future, read-only access to the standard may move to ASTM's Reading Room at: <https://www.astm.org/products-services/reading-room.html>.

For free-of-charge, read-only online access to ASTM F3326–21:

- Access ASTM's CPSC reading room at: <http://www.astm.org/cpsc.htm>.
- Search for ASTM F3326.

Note: in the future, read-only access to the standard may move to ASTM's Reading Room at: <https://www.astm.org/products-services/reading-room.html>.

For free-of-charge, read-only online access to ANSI/CAN/UL/ULC 30:2022:

- Access UL's Standards Sale Site at: <http://shopulstandards.com>.
- Click "Browse and Buy Standards," and search for UL 30.
- Click "Digital View," and sign in, or create a user account.

ASTM F3429/F3429M–20, ASTM F3326–21, and ANSI/CAN/UL/ULC 30:2022 are also available to review in person through CPSC's Office of the

Secretary, 4330 East West Highway, Bethesda, MD 20814.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Office of Workers' Compensation Programs

20 CFR Parts 702, 725, and 726

Office of the Secretary

29 CFR Part 5

41 CFR Part 50–201

Wage and Hour Division

29 CFR Parts 500, 501, 503, 530, 570, 578, 579, 801, 810, and 825

Occupational Safety and Health Administration

29 CFR Part 1903

Mine Safety and Health Administration

30 CFR Part 100

RIN 1290–AA46

Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2023

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Department, 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 2023 annual adjustments for inflation to its civil monetary penalties.

DATES: This final rule is effective on January 15, 2023. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-5076 (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 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, sec. 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the "Prior Inflation Adjustment Act"), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act 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 no later than January 15 of each year.

On July 1, 2016, the Department published an IFR that established the initial catch-up adjustment for most civil penalties that the Department administers and requested comments. See 81 FR 43430 (DOL IFR). On January 18, 2017, the Department published the final rule establishing the 2017 Annual Adjustment for those civil monetary penalties adjusted in the DOL IFR. See 82 FR 5373 (DOL 2017 Annual Adjustment). On July 1, 2016, the U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) (collectively, "the Departments") jointly published an IFR that established the initial catch-up adjustment for civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H-2B program. See 81 FR 42983 (Joint IFR). On March 17, 2017, the Departments jointly published the final rule establishing the 2017 Annual Adjustment for the H-2B civil monetary penalties. See 82 FR 14147 (Joint 2017 Annual Adjustment). The Joint 2017 Annual Adjustment also explained that DOL would make future adjustments to the H-2B civil monetary penalties consistent with DOL's delegated authority under 8 U.S.C. 1184(c)(14), Immigration and Nationality Act section 214(c)(14), and the Inflation Adjustment Act. See 82 FR 14147-48. On January 2, 2018, the Department published the final rule establishing the 2018 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H-2B civil monetary penalties. See 83 FR 7 (DOL 2018 Annual Adjustment). On January 23, 2019, the Department published the final rule establishing the 2019 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H-2B civil monetary penalties. See 84 FR 213 (DOL 2019 Annual Adjustment). On January 15, 2020, the Department published the

final rule establishing the 2020 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H-2B civil monetary penalties. See 85 FR 2292 (DOL 2020 Annual Adjustment). On January 14, 2021, the Department published the final rule establishing the 2021 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H-2B civil monetary penalties. See 86 FR 2964 (DOL 2021 Annual Adjustment). On January 14, 2022, the Department published the final rule establishing the 2022 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H-2B civil monetary penalties. See 87 FR 2328 (DOL 2022 Annual Adjustment). The DOL 2022 Annual Adjustment also included the first annual adjustments for a newly enacted civil monetary penalty regarding retention of tips under the Fair Labor Standards Act (FLSA) and a newly established civil monetary penalty regarding whistleblower protections under the high-wage components of the labor value content requirements of the United States-Mexico-Canada Agreement Implementation Act (USMCA).

This rule implements the 2023 annual inflation adjustments, as required by the Inflation Adjustment Act, for civil monetary penalties assessed or enforced by the Department, including H-2B civil monetary penalties. 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.

This rule is not significant under Executive Order 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule,' as defined by 5 U.S.C. 804(2).

II. Adjustment for 2023

The Department has undertaken a thorough review of civil penalties administered by its various components pursuant to the Inflation Adjustment Act and in accordance with guidance issued by the Office of Management and Budget.¹

The Department first identified the most recent penalty amount, which is the amount established by the 2022

¹ M-23-05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 15, 2022).

annual adjustment as set forth in the DOL 2022 Annual Adjustment published on January 14, 2022.

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 2022 CPI-U and the October 2021 CPI-U. The cost-of-living adjustment multiplier for 2023, based on the Consumer Price Index (CPI-U) for the month of October 2022, not seasonally adjusted, is 1.07745.² In order to compute the 2023 annual adjustment, the Department multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.07745, 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.³ Accordingly, for penalties assessed after January 15, 2023, whose associated violations occurred after the applicable dates listed below, the higher penalty amounts outlined in this rule will apply. The tables below demonstrate the penalty amounts that apply:

CIVIL MONETARY PENALTIES FOR VIOLATIONS OF SECTION 3(M)(2)(B) OF THE FLSA (TIPS)

Violations occurring	Penalty assessed	Which penalty level applies
After March 23, 2018	After March 23, 2018 but on or before November 23, 2021.	Consolidated Appropriations Act of 2018 amount.
After March 23, 2018	After November 23, 2021 but on or before January 15, 2022.	November 23, 2021 level.
After March 23, 2018	After January 15, 2022 but on or before January 15, 2023.	January 15, 2022 level.
After March 23, 2018	After January 15, 2023	January 15, 2023 level.

CIVIL MONETARY PENALTIES FOR USMCA VIOLATIONS

Violations occurring	Penalty assessed	Which penalty level applies
After July 1, 2020	After July 1, 2020 but on or before January 15, 2022	2020 USMCA IFR amount.
After July 1, 2020	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 level.
After July 1, 2020	After January 15, 2023	January 15, 2023 level.

CIVIL MONETARY PENALTIES FOR THE H-2B TEMPORARY NON-AGRICULTURAL WORKER PROGRAM

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 March 17, 2017	August 1, 2016 levels.
After November 2, 2015	After March 17, 2017 but on or before January 2, 2018	March 17, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020 but on or before January 15, 2021	January 15, 2020 levels.
After November 2, 2015	After January 15, 2021 but on or before January 15, 2022	January 15, 2021 levels.
After November 2, 2015	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 levels.
After November 2, 2015	After January 15, 2023	January 15, 2023 levels.

CIVIL MONETARY PENALTIES FOR OTHER DOL PROGRAMS

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 but on or before January 2, 2018	January 13, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020 but on or before January 15, 2021	January 15, 2020 levels.
After November 2, 2015	After January 15, 2021 but on or before January 15, 2022	January 15, 2021 levels.
After November 2, 2015	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 levels.
After November 2, 2015	After January 15, 2023	January 15, 2023 levels.

III. 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.

² OMB provided the year-over-year multiplier, rounded to 5 decimal points. *Id.* at 1.

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

IV. 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.

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

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a “significant regulatory action” is one meeting any of a number of specified conditions, including the following: having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues.

The 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.

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 Executive Order 13563.

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

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

VII. Other Regulatory Considerations

A. *The Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. This Final Rule will not result in such an expenditure. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. *Executive Order 13132: Federalism*

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 667) requires Occupational Safety and Health Administration (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 OSH Act. *See also* 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). Six (6) states and one territory have State Plans that cover only state and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands. Therefore, the requirements to increase the penalty levels do not apply to these State Plans. Twenty-one 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. They 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.

List of Subjects

20 CFR Part 655

Immigration, Labor, Penalties.

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 503

Administrative practice and procedure, Aliens, Employment, Housing, Immigration, 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 810

Labor, Wages, Hours of work, Trade agreement, Motor vehicle, Tariffs, Imports, Whistleblowing.

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.

30 CFR Part 100

Mine safety and health, Penalties.

41 CFR Part 50–201

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

For the reasons set out in the preamble, 20 CFR chapters VI and VII, 29 CFR subtitle A and chapters V, XVII, and XXV, 30 CFR chapter I, and 41 CFR chapter 50 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); and sec. 6, Pub. L. 115–128, 132 Stat. 1547 (48 U.S.C. 1806).

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).

Subpart E issued under 48 U.S.C. 1806

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 following table, 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)	\$10,360	\$11,162
§ 655.801(b)	8,433	9,086
§ 655.810(b)(1) introductory text	2,072	2,232
§ 655.810(b)(2) introductory text	8,433	9,086
§ 655.810(b)(3) introductory text	59,028	63,600

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 following table, 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 section or paragraph and add in its place the dollar amount or date indicated in the right column.

Section/paragraph	Remove	Add
§ 702.204	\$26,269	\$28,304.
§ 702.204	January 15, 2022	January 15, 2023.
§ 702.236	\$320	\$345.
§ 702.236	January 15, 2022	January 15, 2023.
§ 702.271(a)(2)	January 15, 2022	January 15, 2023.
§ 702.271(a)(2)	\$2,627	\$2,830.
§ 702.271(a)(2)	\$13,132	\$14,149.

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 “January 15, 2022” and adding in its place “January 15, 2023” and by removing “\$1,600” and adding in its place “\$1,724”.

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; 30 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.

■ 8. In § 726.302:

■ a. In paragraph (c)(2)(i) introductory text, remove “January 15, 2022” and add “January 15, 2023” in its place;

■ b. Revise the table following paragraph (c)(2)(i); and

■ c. In the following table, 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
(c)(4)	January 15, 2022	January 15, 2023.
(c)(4)	\$157	\$169.
(c)(5)	January 15, 2022	January 15, 2023.
(c)(5)	\$468	\$504.
(c)(6)	January 15, 2022	January 15, 2023.
(c)(6)	\$3,198	\$3,446.

The revision reads as follows:

§ 726.302 Determination of penalty.

* * * * *
 (c) * * *
 (2) * * *
 (i) * * *

TABLE 1 TO PARAGRAPH (c)(2)(i)

Employees	Penalty (per day)
Less than 25	\$169
25–50	335
51–199	504
More than 100	670

* * * * *

DEPARTMENT OF LABOR
Wage and Hour Division
Title 29—Labor

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

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

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5

U.S.C. appendix; 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.*; and the laws listed in 5.1(a) of this part; Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 5.5 [Amended]

■ 10. In § 5.5, amend paragraph (b)(2) by removing “\$29” and adding in its place “\$31”.

§ 5.8 [Amended]

■ 11. In § 5.8, amend paragraph (a) by removing “\$29” and adding in its place “\$31”.

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 12. 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]

■ 13. In § 500.1, amend paragraph (e) by removing “\$2,739” and adding in its place “\$2,951”.

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

■ 14. 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; and sec. 701, Pub. L. 114–74, 129 Stat. 584.

§ 501.19 [Amended]

■ 15. In the following table, 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	\$1,898	\$2,045
§ 501.19(c)(1)	6,386	6,881
§ 501.19(c)(2)	63,232	68,129
§ 501.19(c)(3)	126,463	136,258
§ 501.19(d)	6,386	6,881
§ 501.19(e)	18,970	20,439
§ 501.19(f)	18,970	20,439

PART 503—ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY NONIMMIGRANT NON-AGRICULTURAL WORKERS DESCRIBED IN THE IMMIGRATION AND NATIONALITY ACT

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

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184; 8 CFR 214.2(h); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

§ 503.23 [Amended]

■ 17. In the following table, 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
§ 503.23(b)	\$13,885	\$14,960
§ 503.23(c)	13,885	14,960
§ 503.23(d)	13,885	14,960

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 18. The authority citation for part 530 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary’s Order No. 01–2014

(Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat. 584.

■ 19. In § 530.302:

- a. Amend paragraph (a) by removing “\$1,151” and adding in its place “\$1,240;” and
- b. Revise paragraph (b).
The revision reads as follows:

§ 530.302 Amounts of civil penalties.

* * * * *

(b) The amount of civil money penalties shall be determined per affected homeworkeer 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:

TABLE 1 TO PARAGRAPH (b)

Nature of violation	Penalty per affected homeworkeer		
	Minor	Substantial	Repeated intentional or knowing
Recordkeeping	\$24–249	\$249–496	\$496–1,240
Monetary violations	24–249	249–496	.....
Employment of homeworkeers without a certificate .....	.....	249–496	496–1,240
Other violations of statutes, regulations or employer assurances	24–249	249–496	496–1,240

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

Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended

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

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

§ 570.140 [Amended]

■ 21. In § 570.140, amend paragraph (b)(1) by removing “\$14,050” and adding in its place “\$15,138” and paragraph (b)(2) by removing “\$63,855” and adding in its place “\$68,801”.

PART 578—TIP RETENTION, MINIMUM WAGE, AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 22. The authority citation for part 578 continues to read as follows:

Authority: 29 U.S.C. 216(e), as amended by sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29, sec. 302(a), Pub. L. 110–233, 122 Stat. 920, and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, 1321–373, and sec. 701, Pub. L. 114–74, 129 Stat. 584.

§ 578.3 [Amended]

■ 23. In § 578.3, amend paragraph (a)(1) by removing “\$1,234” and adding in its place “\$1,330” and paragraph (a)(2) by removing “\$2,203” and adding in its place “\$2,374”.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 24. The authority citation for part 579 continues to read as follows:

Authority: 29 U.S.C. 203(m), (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.

§ 579.1 [Amended]

■ 25. In the following table, 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)	\$14,050	\$15,138
§ 579.1(a)(1)(i)(B)	63,855	68,801
§ 579.1(a)(2)(i)	2,203	2,374
§ 579.1(a)(2)(ii)	1,234	1,330

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

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

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

§ 801.42 [Amended]

■ 27. In § 801.42, amend paragraph (a) introductory text by removing “\$23,011” and adding in its place “\$24,793”.

PART 810—HIGH-WAGE COMPONENTS OF THE LABOR VALUE CONTENT REQUIREMENTS UNDER THE UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT

■ 28. The authority citation for part 810 is revised to read as follows:

Authority: 19 U.S.C. 1508(b)(4) and 19 U.S.C. 4535(b); 28 U.S.C. 2461 note (Federal

Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

§ 810.800 [Amended]

■ 29. In § 810.800, amend paragraph (c)(3)(i) by removing “\$53,111” and adding in its place “\$57,224”.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

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

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

§ 825.300 [Amended]

■ 31. In § 825.300, amend paragraph (a)(1) by removing “\$189” and adding in its place “\$204”.

DEPARTMENT OF LABOR Occupational Safety and Health Administration

Title 29—Labor

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 32. 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]

■ 33. In the following table, 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	January 15, 2022	January 15, 2023.
§ 1903.15(d)(1)	\$10,360	\$11,162.
§ 1903.15(d)(1)	\$145,027	\$156,259.
§ 1903.15(d)(2)	\$145,027	\$156,259.
§ 1903.15(d)(3)	\$14,502	\$15,625.
§ 1903.15(d)(4)	\$14,502	\$15,625.

Paragraph	Remove	Add
§ 1903.15(d)(5)	\$14,502	\$15,625.
§ 1903.15(d)(6)	\$14,502	\$15,625.

DEPARTMENT OF LABOR
Mine Safety and Health Administration
Title 30—Mineral Resources

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

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

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

■ 35. In § 100.3, amend paragraph (a)(1) introductory text by removing “\$79,428” and adding in its place “\$85,580” and by revising table 14 to paragraph (g).

The revision reads as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *
 (g) * * *

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE

Points	Penalty (\$)
60 or fewer	\$159
61	173
62	186
63	203
64	220
65	238
66	258
67	280
68	302
69	328
70	354
71	385
72	418

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE—Continued

Points	Penalty (\$)
73	453
74	488
75	530
76	576
77	621
78	674
79	731
80	792
81	858
82	927
83	1,006
84	1,089
85	1,182
86	1,280
87	1,385
88	1,501
89	1,626
90	1,762
91	1,908
92	2,065
93	2,238
94	2,425
95	2,627
96	2,846
97	3,080
98	3,340
99	3,618
100	3,920
101	4,245
102	4,599
103	4,982
104	5,396
105	5,847
106	6,333
107	6,861
108	7,432
109	8,052
110	8,722
111	9,446
112	10,235
113	11,088

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE—Continued

Points	Penalty (\$)
114	12,012
115	13,011
116	14,094
117	15,270
118	16,541
119	17,919
120	19,410
121	21,029
122	22,777
123	24,677
124	26,733
125	28,955
126	31,369
127	33,983
128	36,812
129	39,879
130	43,201
131	46,799
132	50,695
133	54,918
134	59,299
135	63,677
136	68,060
137	72,437
138	76,819
139	81,198
140 or more	85,580

* * * * *
 §§ 100.4 and 100.5 [Amended]

■ 36. In the following table, 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)	\$2,648	\$2,853
§ 100.4(b)	5,293	5,703
§ 100.4(c) introductory text	6,620	7,133
§ 100.4(c) introductory text	79,428	85,580
§ 100.5(c)	8,605	9,271
§ 100.5(d)	363	391
§ 100.5(e)	291,234	313,790

Title 41—Public Contracts and Property Management

PART 50–201—GENERAL REGULATIONS

■ 37. The authority citation for part 50–201 continues to read as follows:

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

§ 50–201.3 [Amended]

■ 38. In § 50–201.3, amend paragraph (e) by removing “\$29” and adding in its place “\$31”.

Signed in Washington, DC.

Martin J. Walsh,

Secretary, U.S. Department of Labor.

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

Agency	Law	Name/description	CFR citation	2022		2023	
				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)		\$79,428		\$85,580.
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(g)	\$148	\$79,428	\$159	\$85,580.
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)	2,648		2,853	
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)	5,293		5,703	
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty for failure to provide timely notification under 103(j) of the Mine Act.	30 CFR 100.4(c)	6,620	\$79,428	7,133	\$85,580.
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)		\$8,605		\$9,271.
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(d)		\$363		\$391.
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e)		\$291,234		\$313,790.
EBSA	Employee Retirement Income Security Act.	Section 209(b): Per plan year for failure to furnish reports (e.g., pension benefit statements) to certain former employees or maintain employee records each employee a separate violation.	29 CFR 2575.1-3		\$33		\$36.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(2)—Per day for failure/refusal to properly file plan annual report.	29 CFR 2575.1-3		\$2,400		\$2,586.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(4)—Per day for failure to disclose certain documents upon request under Section 101(k) and (l); failure to furnish notices under Sections 101(j) and 514(e)(3)—each statutory recipient a separate violation.	29 CFR 2575.1-3		\$1,899		\$2,046.
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) under Section 101(g).	29 CFR 2575.1-3		\$1,746		\$1,881.
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 2575.1-3		\$171 per day, not to exceed \$1,713 per request.		\$184 per day, not to exceed \$1,846 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 2575.1-3		\$152		\$164.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(8)—Per each failure by an endangered status multiemployer plan to adopt a funding improvement plan or meet benchmarks; or failure of a critical status multiemployer plan to adopt a rehabilitation plan.	29 CFR 2575.1-3		\$1,507		\$1,624.
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)(I)—each employee a separate violation.	29 CFR 2575.1-3		\$127		\$137.

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Agency	Law	Name/description	CFR citation	2022		2023	
				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)(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 2575.1-3		\$127		\$137.
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 during non-compliance period.	29 CFR 2575.1-3		\$127		\$137.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.1-3	3,192		3,439	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.1-3	19,157		20,641	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.1-3		\$638,556		\$688,012.
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 2575.1-3		\$117		\$126.
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 2575.1-3		\$18,500		\$19,933.
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 2575.1-3		\$1,264		\$1,362.
OSHA	Occupational Safety and Health Act.	Serious Violation	29 CFR 1903.15(d)(3).		\$14,502		\$15,625.
OSHA	Occupational Safety and Health Act.	Other-Than-Serious	29 CFR 1903.15(d)(4).		\$14,502		\$15,625.
OSHA	Occupational Safety and Health Act.	Willful	29 CFR 1903.15(d)(1).	10,360	\$145,027	11,162	\$156,259.
OSHA	Occupational Safety and Health Act.	Repeated	29 CFR 1903.15(d)(2).		\$145,027		\$156,259.
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(6).		\$14,502		\$15,625.
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5).		\$14,502 per day.		\$15,625 per day.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1).		\$189		\$204.
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)(1)		\$1,234		\$1,330.
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)(2)		\$2,203		\$2,374.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)(i).		\$2,203		\$2,374.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)(ii).		\$1,234		\$1,330.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 570.140(b)(1).		\$14,050		\$15,138.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(1)(i)(A).		\$14,050		\$15,138.
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 570.140(b)(2).		\$63,855		\$68,801.
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 579.1(a)(1)(i)(B).		\$63,855		\$68,801.
WHD	Fair Labor Standards Act.	Child Labor willful or repeated that causes serious injury or death (penalty amount doubled).	29 CFR 570.140(b)(2); 29 CFR 579.1(a)(1)(i)(B) Doubled.		\$127,710		\$137,602.

Agency	Law	Name/description	CFR citation	2022		2023	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)		\$2,739		\$2,951.
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1).		\$2,072		\$2,232.
WHD	Immigration & Nationality Act.	H1B retaliation	20 CFR 655.801(b)		\$8,433		\$9,086.
WHD	Immigration & Nationality Act.	H1B willful or discrimination	20 CFR 655.810(b)(2).		\$8,433		\$9,086.
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3).		\$59,028		\$63,600.
WHD	Immigration & Nationality Act.	D-1	20 CFR 655.620(a)		\$10,360		\$11,162.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.5(b)(2)		\$29		\$31.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)		\$29		\$31.
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50-201.3(e)		\$29		\$31.
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)		\$23,011		\$24,793.
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)		\$1,898		\$2,045.
WHD	Immigration & Nationality Act.	H2A willful or discrimination	29 CFR 501.19(c)(1)		\$6,386		\$6,881.
WHD	Immigration & Nationality Act.	H2A Safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)		\$63,232		\$68,129.
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(4)		\$126,463		\$136,258.
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)		\$6,386		\$6,881.
WHD	Immigration & Nationality Act.	H2A displacing a US worker	29 CFR 501.19(e)		\$18,970		\$20,439.
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker	29 CFR 501.19(f)		\$18,970		\$20,439.
WHD	Immigration & Nationality Act.	H-2B	29 CFR 503.23(b)		\$13,885		\$14,960.
WHD	Immigration & Nationality Act.	H-2B	29 CFR 503.23(c)		\$13,885		\$14,960.
WHD	Immigration & Nationality Act.	H-2B	29 CFR 503.23(d)		\$13,885		\$14,960.
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(a)		\$1,151		\$1,240.
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(b)	22	\$1,151	24	\$1,240.
WHD	United States-Mexico-Canada Agreement Implementation Act.	Whistleblower	29 CFR 810.800(c)(3)(i).		\$53,111		\$57,224.
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		\$26,269		\$28,304.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments	20 CFR 702.236		\$320		\$345.
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).	2,627	\$13,132	2,830	\$14,149.
OWCP	Black Lung Benefits Act.	Failure to report termination of payments	20 CFR 725.621(d)		\$1,600		\$1,724.
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).	157		169	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 25-50 employees.	20 CFR 726.302(c)(2)(i).	311		335	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 51-100 employees.	20 CFR 726.302(c)(2)(i).	468		504	
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).	622		670	

Agency	Law	Name/description	CFR citation	2022		2023	
				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 after 10th day of notice.	20 CFR 726.302(c)(4).	157	.....	169	
OWCP ...	Black Lung Benefits Act.	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5).	468	.....	504	
OWCP ...	Black Lung Benefits Act.	Failure to secure payment of benefits	20 CFR 726.302(c)(5).	.....	\$3,198 .....	.....	\$3,446.

[FR Doc. 2023-00271 Filed 1-12-23; 8:45 am]
 BILLING CODE 4510-HL-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA-2022-N-3240]

Medical Devices; Neurological Devices; Classification of the Digital Therapy Device To Reduce Sleep Disturbance for Psychiatric Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the digital therapy device to reduce sleep disturbance for psychiatric conditions into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the digital therapy device to reduce sleep disturbance for psychiatric conditions’ classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients’ access to beneficial innovative devices.

DATES: This order is effective January 13, 2023. The classification was applicable on November 6, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick Antkowiak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4118, Silver Spring, MD 20993-0002, 240-402-3705, *Patrick.Antkowiak@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the digital therapy device to reduce sleep disturbance for psychiatric conditions

as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients’ access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 27, 2020, FDA received NightWare, Inc’s request for De Novo classification of the NightWare Kit (Apple iPhone, Apple Watch, Apple iPhone Charging Cable, Apple Watch Charging Cable). FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness,

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

HENRY MCMASTER, in his official capacity as
Governor of the State of South Carolina, and
SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR;
MARTIN J. WALSH, in his official capacity as
Secretary of Labor; OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION; and DOUGLAS
PARKER, in his official capacity as Assistant
Secretary for Occupational Safety and Health,

Defendants.

Civil Action No.: 3:22-cv-02603-SAL

Declaration of Gwen Thomas

I, Gwen Thomas, do hereby declare:

1. I am over the age of 18 and competent to give this Declaration.
2. I am the State Plan Manager at the South Carolina Department of Labor, Licensing & Regulation.
3. Exhibit 1 is a true and accurate copy of the notice that I received from the U.S. Department of Labor on January 13, 2023.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of February, 2023.


Gwen Thomas

Exhibit 1

From: SPAAdmin@osha.gov <SPAAdmin@osha.gov>
Sent: Friday, January 13, 2023 4:45 AM
To: Gwen Thomas <gwen.thomas@llr.sc.gov>
Subject: Standard Log Entry Memo: Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act - Annual Adjustment for 2023 29 CFR Part 1903

---- SCDLLR NOTICE (M365) ----

- * This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- * Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

This is an E-mail notification from the State Plan Application (SPA).

Standard: Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act - Annual Adjustment for 2023 29 CFR Part 1903 Standard Promulgation Date: 15-JAN-23 Response Due Date: 15-MAR-23 Adoption Due Date: 15-JUL-23 FR Internet Link:
<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.federalregister.gov%2Fdocuments%2F2023%2F01%2F13%2F2023-00271%2Ffedera&data=05%7C01%7CKristina.Baker%40llr.sc.gov%7C5bf7bd1c292046ec14a108db0a296567%7C9e59d7d1b4f94b52b2256cc0f0c10835%7C0%7C0%7C638114945130979783%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=gBjlu%2FKmA1bS%2FG7r3zDO1diYo%2FgLpG80EfyXD%2BQBGsG%3D&reserved=0>
Supplemental Link:

State Plan Requirements:

On 01/13/2023, the Department of Labor published a Federal Register notice on the Final Rule on the Implementation of the 2023 Annual Adjustment to Civil Penalties for Inflation, effective 01/15/2023. Since this final rule imposes additional or more stringent requirements on employers than existing OSHA standards, State Plans must adopt an "at least as effective" standard or amendment to their existing standards, or show that they already have an existing "at least as effective" standard, within six months of the standard's publication date. Within 60 days of the publication date of this standard, State Plans must respond with notice of intent, which should indicate if the State Plan will adopt, either identically or different, or if the State Plan will not adopt because it already has an existing "at least as effective as" standard. Documentation of State Plan adoption, either identical or different, must be submitted within 60 days of the adoption. For a State Plan that adopts or has an existing different standard, the required documentation is a plan change supplement, including an electronic copy of the standard and comparison document identifying and justifying the differences between the State Plan and federal standards. States Plans must either post its identical or different standard on its website and provide a link to OSHA or provide information on how the public may obtain a copy. The effective date for a State Plan standard may be no later than the date of state promulgation or the federal effective date, whichever is later. OSHA will post summary information of the responses on its website. State Plans may enter their responses, as well as the link/contact information, directly in SPA or work with their Regional State Plan Monitor to do so. The 01/13/2023 Federal Register notice is located at <https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.federalregister.gov%2Fpublic-inspection%2F2023-00271%2Ffederal-civil-penalties-inflation-adjustment-act-annual-adjustments-for->

[2023&data=05%7C01%7CKristina.Baker%40lr.sc.gov%7C5bf7bd1c292046ec14a108db0a296567%7C9e59d7d1b4f94b52b2256cc0f0c10835%7C0%7C0%7C638114945130979783%7CUnknown%7CTWFpbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikh1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=2muHX3HcXnXiRs5k83nYGRbxIm%2B%2FK6uuTw%2BWC2YD0jE%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fportal.osha.gov%2Fspa&data=05%7C01%7CKristina.Baker%40lr.sc.gov%7C5bf7bd1c292046ec14a108db0a296567%7C9e59d7d1b4f94b52b2256cc0f0c10835%7C0%7C0%7C638114945130979783%7CUnknown%7CTWFpbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikh1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=2muHX3HcXnXiRs5k83nYGRbxIm%2B%2FK6uuTw%2BWC2YD0jE%3D&reserved=0)

State Plan Response Instructions:

State Plan response on intent to adopt is due by 15-MAR-23 and State Plan adoption must be completed by 15-JUL-23. State Plans should enter responses directly into SPA at

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fportal.osha.gov%2Fspa&data=05%7C01%7CKristina.Baker%40lr.sc.gov%7C5bf7bd1c292046ec14a108db0a296567%7C9e59d7d1b4f94b52b2256cc0f0c10835%7C0%7C0%7C638114945130979783%7CUnknown%7CTWFpbGZsb3d8eyJWljoimC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikh1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=Bs1Qjz%2Bzz6XOHjOHptOYlfjH258oZufZbYoEsfdpNzM%3D&reserved=0>. Please contact your Regional State

Plan Monitor if you need assistance.