



4310-MR-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Safety and Environmental Enforcement**

**30 CFR Part 250**

**[Docket ID: BSEE-2016-0010; 16XE1700DX EX1SF0000.DAQ000 EEEE50000]**

**RIN: 1014-AA30**

**Civil Penalty Inflation Adjustment**

**AGENCY:** Bureau of Safety and Environmental Enforcement, Interior.

**ACTION:** Interim final rule.

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**SUMMARY:** This rule adjusts the level of the civil monetary penalty contained in the Bureau of Safety and Environmental Enforcement (BSEE) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and Office of Management and Budget (OMB) guidance.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments will be accepted until [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for Docket No. [BSEE-2016-0010] and follow the instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* David Fish, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, 1849 C Street NW, Washington DC 20240

**FOR FURTHER INFORMATION CONTACT:** David Fish, Acting Chief Safety and

Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208-3955 or by email: regs@bsee.gov.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index (CPI) to account for inflation. (43 U.S.C. § 1350(b)(1). The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 104-410) (FCPIA of 1990) required that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every 4 years. Pursuant to OCSLA and the FCPIA of 1990, the OCSLA maximum civil penalty amount was last adjusted in 2011. (76 FR 38294, June 30, 2011). In 2014 and 2015, BSEE performed computations to determine if it should increase the

current OCSLA maximum civil penalty amount to account for inflation. After running the computations, BSEE determined that adjustments of the OCSLA maximum civil penalty amount were not warranted in 2014 and 2015.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74) (FCPIA of 2015). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment, if warranted, through rulemaking, and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Pursuant to OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalty per day per violation:

CFR Citation	Description of the Penalty	Current Maximum Penalty	Multiplier	Adjusted Maximum Penalty
30 CFR 250.1403	Failure to comply per day	\$40,000	1.05042	\$42,017

## II. Calculation of Adjustment

The OMB issued guidance on calculating the civil monetary penalty adjustments pursuant to the FCPIA of 2015. (February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*.) Under this guidance, the Department of the Interior has identified applicable civil monetary penalties and calculated the necessary adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an

administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review activities. The calculated adjustment is based on the percent change between the CPI for all Urban Consumers for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI.

For 2016, OCSLA and the FCPIA of 2015 required that BSEE adjust the OCSLA maximum civil penalty amount and provide for timing of the adjustment. In computing the new OCSLA maximum civil penalty amount, since BSEE last adjusted that amount in 2011, BSEE divided the October 2015 CPI by the October 2011 CPI (237.8/226.4). This resulted in a multiplying factor of 1.05042. The existing maximum civil penalty amount (\$40,000) was then multiplied by the multiplying factor ( $40,000 \times 1.05042 = 42,016.8$ ). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$42,017. This new OCSLA maximum civil penalty amount does not exceed 150 percent of the OCSLA maximum civil penalty amount as of November 2, 2015, as stipulated by the FCPIA of 2015. Also, pursuant to the FCPIA of 2015, the increase in the OCSLA maximum civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predate such increase.

### **III. Procedural Requirements**

#### **A. Regulatory Planning and Review (E.O. 12866 and 13563)**

Executive Order (E.O) 12866 provides that the Office of Information and Regulatory Affairs in the OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (See 5 U.S.C 603 (a) and 604 (a).) The Federal Civil Penalties Adjustment Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. Thus the RFA does not apply to this rulemaking.

### **C. Small Business Regulatory Enforcement Fairness Act**

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

- (1) Will not have an annual effect on the economy of \$100 million or more.
- (2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**D. Unfunded Mandates Reform Act**

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

**E. Takings (E.O. 12630)**

This rule will not affect a taking of private property or otherwise have takings implications under E.O. 12630. A takings implication assessment is not required.

**F. Federalism (E.O. 13132)**

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

**G. Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

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

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **H. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175, and have determined that it has no substantial direct effects on federally recognized Indian tribes and that, consultation under the Department of the Interior's tribal consultation policy is not required.

#### **I. Paperwork Reduction Act**

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

#### **J. National Environmental Policy Act**

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

#### **K. Effects on the Energy Supply (E.O. 13211)**

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

#### **L. Clarity of this Regulation**

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use common, everyday words and clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### **M. Administrative Procedure Act**

The FCPIA of 2015 requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties of no later than August 1, 2016. To comply with the FCPIA of 2015, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. The Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure...are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an

opportunity for prior public comment (5 U.S.C. 553(b).) BSEE finds that there is good cause to promulgate this rule without first providing the public comment. It would not be possible to meet the deadlines imposed by the FCPIA of 2015 if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, BSEE is promulgating this interim final rule to implement the statutory directive in the FCPIA of 2015, which requires agencies to publish an interim final rule and to update the civil penalty amounts by applying a specified formula. BSEE has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters, so notice and comment is unnecessary. Accordingly, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule.

Thus, BSEE finds pre-promulgation notice and public comment to be impracticable and unnecessary.

#### **List of Subjects in 30 CFR Part 250**

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

For the reasons given in the preamble, the Bureau of Safety and Environmental Enforcement amends Title 30, Chapter II, Subchapter B, Part 250 Code of Federal Regulations as follows.

#### **PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

1. The authority citation for 30 CFR Part 250 is revised to read as follows:

**Authority:** 30 U.S.C. 1751, 31 U.S.C. 9701, 43 U.S.C. 1334 and Sec. 107, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

2. Revise § 250.1403 to read as follows:

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**§ 250.1403 What is the maximum civil penalty?**

The maximum civil penalty is \$42,017 per day per violation.

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Janice M. Schneider  
Assistant Secretary  
Land and Minerals Management

[FR Doc. 2016-15157 Filed: 6/27/2016 8:45 am; Publication Date: 6/28/2016]