



Billing Code: 4910-60-W

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA-2016-0010]

RIN-2137-AF16

Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Interim final rule.

SUMMARY: PHMSA is revising references in its regulations to the maximum civil penalties for violations of the Federal Pipeline Safety Laws, or any PHMSA regulation or order issued thereunder. Under the “Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” which further amended the “Federal Civil Penalties Inflation Adjustment Act of 1990,” federal agencies are required to adjust their civil monetary penalties effective August 1, 2016, and then annually thereafter, to account for changes in inflation.

PHMSA finds good cause to amend the regulation related to civil penalties without notice and opportunity for public comment. For the reasons described below, advance public notice is unnecessary.

DATES: The effective date of this interim final rule is August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Aaron Glaser, Attorney-Advisor, Pipeline Safety Division, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, by telephone at 202-366-6318 or by email at aaron.glaser@dot.gov; Melanie Stevens, Attorney-Advisor, Pipeline Safety Division, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, by telephone at 202-366-5466 or by email at melanie.stevens@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Procedures

Background

Section 701 of the “Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015” (Pub. L. 114-72) (the 2015 Act) amended the “Federal Civil Penalties Inflation Adjustment Act of 1990” (Pub. L. 101-410) (Inflation Adjustment Act) to require that federal agencies adjust their civil penalties with an initial “catch-up” adjustment through an interim final rulemaking by July 1, 2016, as well as make subsequent annual adjustments for inflation. This interim rule adjusts the maximum civil penalties assessed under 49 U.S.C. 60101, et seq., or regulations or orders issued thereunder. These adjusted penalties will apply to violations occurring on or after the effective date of August 1, 2016.

On February 24, 2016, the Office of Management and Budget (OMB) issued a “Memorandum for the Heads of Executive Departments and Agencies, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” M-16-06 (OMB

Memorandum M-16-06), providing guidance to federal agencies on how to update their civil penalties pursuant to the 2015 Act. OMB Memorandum M-16-06 directs agencies to use multipliers to adjust their civil monetary penalties, or the minimum and maximum penalties, based on the year the penalty was established or last adjusted by statute or regulation other than under the Inflation Adjustment Act (Base Year). For the catch-up adjustment, the agency must use the multiplier, based on the Consumer Price Index for October 2015, provided in the table of OMB Memorandum M-16-06 and multiply it by the current maximum penalty amount. After making an adjustment, all penalty levels must be rounded to the nearest dollar, but no penalty level may be increased by more than 150 percent of corresponding penalty levels in effect on November 2, 2015.

PHMSA is revising the maximum civil penalty amounts in its regulations, consistent with the process outlined in OMB Memorandum M-16-06. The “Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011” (the 2011 Act) (Public Law No: 112-90) adjusted the maximum civil penalties for violations under 49 U.S.C. 60101, et seq. In 2013, PHMSA amended 49 Code of Federal Regulations (CFR) § 190.223(a) to conform to the 2011 Act, effective January 2, 2012. (78 FR 58897). Based on the 2012 effective date, a multiplier 1.02819 was used to calculate the updated penalties for violations under 49 U.S.C. 60101, et seq., and any regulation or order issued thereunder. The civil penalty amounts for violations of 49 U.S.C. 60103 and 60111 were last set by Congress in 1994 with the Revision of Title 49, United States Code Annotated, Transportation (Pub. L. 103-272), and last adjusted by PHMSA in 1996 via regulation amending 49 CFR 190.223(c) (61 FR 18515). The 1996 multiplier of 1.50245 was used to calculate the updated penalties for violations of 49 U.S.C. 60103 and 60111. Lastly, the

penalty amount for violations of 49 U.S.C. 60129 was last set by Congress in 2002 with the passage of the “Pipeline Safety Improvement Act of 2002,” (Pub. L. 107-355), and last adjusted by PHMSA in 2005 via regulation amending 49 CFR § 190.223(d) (70 FR 11137). The 2005 multiplier of 1.19397 was used to calculate the updated penalties for violations of 49 U.S.C. 60129. These revised penalties are shown as follows:

Violated Statute	CFR Citation	Base Year	Current Maximum Civil Penalty	Revised Maximum Civil Penalty
49 U.S.C. 60101 <u>et seq.</u> , and any regulation or order issued thereunder.	49 CFR 190.223(a)	2012	\$200,000 for each violation for each day the violation continues, with a maximum penalty not to exceed \$2,000,000 for a related series of violations.	\$205,638 for each violation for the each day the violation continues, with a maximum penalty not to exceed \$2,056,380 for a related series of violations.
49 U.S.C. 60103; 49 U.S.C. 60111	49 CFR 190.223(c)	1996	A penalty not to exceed \$50,000, which may be in addition to other penalties under 40 U.S.C. 60101, <u>et seq.</u>	An administrative civil penalty not to exceed \$75,123, which may be in addition to other penalties assessed under 49 U.S.C. 60101, <u>et seq.</u>
49 U.S.C. 60129	49 CFR 190.223(d)	2005	A penalty not to exceed \$1,000.	A penalty not to exceed \$1,194.

The 2015 Act only applies to penalties prospectively and does not retrospectively change any civil penalties previously assessed or enforced.

Starting in January 2017, PHMSA is required to publish in the Federal Register annual inflation adjustments for each penalty levied under 49 U.S.C. 60101, et seq., and do so no later than January 15 of each year.

The 2015 Act does not alter PHMSA's existing authority to assess penalties levied for violations under 49 U.S.C. 60101, et seq. Additionally, if future penalties or penalty adjustments are enacted by statute or regulation, PHMSA will not adjust these penalties for inflation in the first year after these penalties are in effect. PHMSA will apply new annual penalty levels to any penalties assessed on or after the date these new levels take effect.

II. Justification for Interim Final Rule

The Administrative Procedure Act (APA) authorizes agencies to forego providing the opportunity for prior public notice and comment if an agency finds good cause that notice and public procedure are unnecessary. *See* 5 U.S.C. 553(b)(3)(B). In this instance, PHMSA is required under the 2015 Act and directed by the OMB Guidance to publish this rule by July 1, 2016, with the penalty levels stated herein to take effect no later than August 1, 2016. Further, PHMSA is mandated by the 2015 Act and directed by the OMB Guidance to adjust the penalty levels pursuant to the specific procedures also stated herein. Any public comments received through notice and public procedure would therefore not affect PHMSA's obligation to comply with the 2015 Act or OMB Guidance, nor would they affect the methods used by PHMSA to adjust the penalty levels. PHMSA, therefore, finds good cause that APA notice and comment are unnecessary for this interim final rule.

III. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for this Rulemaking

This rule is published under the authority of the 2015 Act, as well 49 U.S.C. 60101 et seq. These statutes provide PHMSA with the authority to levy civil penalties for violations of the federal Pipeline Safety Laws. The 2015 Act requires penalties levied by federal agencies

pursuant to these laws to be adjusted, and for the new adjusted penalties to take effect no later than August 1, 2016. Further, beginning in January 2017, the 2015 Act requires such penalties to be adjusted on an annual basis no later than January 15 of each year.

B. Executive Orders 12866 and 13563, and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing DOT policies and procedures and determined to be non-significant under Executive Orders 12866 and 12563. This rule is considered a regulatory action under Section 3(e) of Executive Order 12866, and pursuant to Section 6(a)(3)(D) of Executive Order 12866. Further, this interim final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation because it is limited to a ministerial act on which the agency has no discretion and the economic impact of this rule is minimal. (44 FR 11034). Accordingly, preparation of a regulatory evaluation is not warranted.

This rule imposes no new costs upon persons conducting operations in compliance with federal pipeline statutes and regulations. Those operators not in compliance with these statutes and regulations may experience an increased cost, based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus, is not considered in any evaluation of the significance of this regulatory action. The amendments in this rule could provide a deterrent effect that could potentially lead to safety benefits; however, PHMSA does not expect such benefits to be significant. Overall, it is anticipated that costs and benefits from this rule would be minimal in real dollars.

C. Executive Order 13132

PHMSA has analyzed this rule according to Executive Order 13132 on federalism. The interim final rule does not have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. The rule neither imposes substantial direct compliance costs on state and local governments nor preempts state law governing intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 on consultation and coordination with Indian tribal governments. Because the rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Executive Order 13211

This rule is not a "significant energy action" under Executive Order 13211 on actions concerning regulations that significantly affect energy supply, distribution, or use. It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs (OIRA) within OMB has not designated this rule as a significant energy action.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601-611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of

small entities. The provisions of this interim final rule may apply specifically to all businesses using pipelines to transport hazardous liquids, gas, and LNG in interstate commerce. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$155,000,000 or more, adjusted for inflation, in any year for either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least-burdensome alternative that achieves the objective of the rule.

H. Paperwork Reduction Act

This interim final rule imposes no new requirements for recordkeeping or reporting.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 USC 4321 – 4375), requires federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of these amendments. Specifically, PHMSA evaluates the risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; if the proposed regulation would be carried out in a defined geographic area; and the resources, especially in environmentally sensitive areas, that could be impacted by any proposed regulations.

This interim final rule would be generally applicable to pipeline operators, and would not be carried out in a defined geographic area. The adjusted, increased civil penalties listed in this interim final rule may act as a deterrent to those violating the Federal Pipeline Safety Laws, or any PHMSA regulation or order issued thereunder. This may result in a positive environmental impact as a result of increased compliance with the Federal Pipeline Safety Laws and any PHMSA regulations or orders issued thereunder. Based on the above discussion, PHMSA concludes there are no significant environmental impacts associated with this interim final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70, pages 19477-78) or online at <https://www.federalregister.gov/articles/2000/04/11/00-8505/privacy-act-of-1974-systems-of-records> or <https://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

K. Executive Order 13609 and International Trade Analysis

Sections 3 and 4 of Executive Order 13609 direct an agency to conduct a regulatory analysis and ensure that a proposed rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule. This interim final rule is not a significant regulatory action, but a regulatory action under Section 3(e) of Executive Order 12866. PHMSA is not required under Executive Orders 12866 and 13563 to submit a regulatory analysis.

L. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action in the Unified Agenda.

List of Subjects in 49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

In consideration of the foregoing, PHMSA is amending 49 CFR part 190 as follows:

PART 190- PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

1. The authority citation for part 190 is revised to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 et seq.; 49 CFR 1.97; Pub. L. 114-74, section 701; Pub. L. No: 112-90, section 2; Pub. L. 101-410, sections 4-6.

2. Section 190.223 is amended by revising paragraphs (a) through (d) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101 et seq., or any regulation or order issued thereunder is subject to an administrative civil penalty not to exceed \$205,638 for each violation for each day the violation continues, except that the maximum administrative civil penalty may not exceed \$2,056,380 for any related series of violations.

(b) Any person found to have violated a provision of 33 U.S.C. 1321(j) or any regulation or order issued thereunder is subject to an administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

(c) Any person found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed \$75,123, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed \$1,194, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR Part 1.97.

Marie Therese Dominguez,
Administrator

[FR Doc. 2016-15529 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]