



**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3160**

**[17X.LLWO310000.L13100000.PP0000]**

**RIN: 1004-AE49**

**Onshore Oil and Gas Operations—Annual Civil Penalties Inflation Adjustments**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management’s regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “Act”). The adjustments made by this final rule constitute the annual inflation adjustments contemplated by the Act, and are consistent with applicable Office of Management and Budget (OMB) guidance.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143, for information regarding the BLM’s Fluid Minerals Program. For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, at 202-912-7442. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week to contact the above individuals.

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**I. Background**

On November 2, 2015, the President signed the Act into law (Sec. 701 of Public Law 114-74).

The Act requires agencies to:

1. Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking in 2016;
2. Make subsequent annual adjustments for inflation beginning in 2017; and
3. Report annually in Agency Financial Reports on these inflation adjustments.

In July 2016, the BLM issued an interim final rule that adjusted the level of civil monetary penalties with the initial “catch-up” adjustment, which is reflected in the table below in the “Previous Penalty” column.

With this final rule, the BLM is adjusting civil monetary penalties for inflation. The adjustments made by this rule are consistent with the requirements of the Act and OMB guidance.

The purpose of these adjustments is to maintain the deterrent effect of civil penalties found in existing regulations, in order to further the policy goals of the underlying statutes. The BLM has reviewed its existing regulations and determined that only the civil monetary penalties found at 43 CFR 3163.2 are subject to the Act’s requirements.

The adjustments made by this final rule constitute the first annual adjustment contemplated by the Act, and include the following changes to the penalties:

CFR Citation	Description of the Penalty	Previous Penalty	Adjusted Penalty
43 CFR 3163.2(a)	Failure to comply	\$1,031	\$1,048
43 CFR 3163.2(b)	If corrective action is not taken	\$10,314	\$10,483
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation	\$1,031	\$1,048
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	\$20,628	\$20,965
43 CFR 3163.2(f)	False or inaccurate documents; unlawful transfer or purchase	\$51,570	\$52,414
43 CFR 3163.2(g)(1)	Initial penalty under 43 CFR 3163.2(a) for a major violation	\$1,031	\$1,048
43 CFR 3163.2(g)(1)	Maximum penalty under 43 CFR 3163.2(a) for a major violation	\$2,063	\$2,097
43 CFR 3163.2(g)(1)	Initial penalty under 43 CFR 3163.2(b) for a major violation	\$10,314	\$10,483

43 CFR 3163.2(g)(1)	Maximum penalty under 43 CFR 3163.2(b) for a major violation	\$20,628	\$20,965
43 CFR 3163.2(g)(1)	Penalty under 43 CFR 3163.2(d) for a major violation	\$1,031	\$1,048
43 CFR 3163.2(g)(1)	Penalty under 43 CFR 3163.2(e) for a major violation	\$20,628	\$20,965
43 CFR 3163.2(g)(1)	Penalty under 43 CFR 3163.2(f) for a major violation	\$51,570	\$52,414
43 CFR 3163.2(g)(2)(iii)	Initial penalty under 43 CFR 3163.2(a) for a minor violation	\$103	\$105
43 CFR 3163.2(g)(2)(iii)	Initial penalty under 43 CFR 3163.2(b) for a minor violation	\$1,031	\$1,048
43 CFR 3163.2(g)(2)(iii)	Maximum penalty under 43 CFR 3163.2(a) for a minor violation	\$206	\$209
43 CFR 3163.2(g)(2)(iii)	Maximum penalty under 43 CFR 3163.2(b) for a minor violation	\$2,063	\$2,097

## II. Calculation of Adjustment

OMB issued guidance on calculating the annual adjustment for 2017 in accordance with the Act. *See* December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the 2017 annual adjustment pursuant to 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 annual adjustment. 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. The calculated 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, October 2016 CPI-U (241.729) / October 2015 CPI-U (237.838) = 1.01636.

### **III. Procedural Requirements**

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

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. Executive Order 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 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 Act requires agencies to adjust civil penalties annually for inflation through a final rule (see

§4(b)(2) of the Act). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

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

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

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

This rule will potentially affect individuals and companies who hold leases on Federal or Indian lands. The BLM believes that the vast majority of potentially affected entities will be small businesses as defined by the Small Business Administration. However, the BLM does not believe the rule will pose a significant economic impact on the industry, including any small entities, for two reasons. First, any lessee can avoid being assessed civil penalties by operating in compliance with BLM rules and regulations. Second, payments for penalties adjusted as a result of this rule will be negligible compared with the \$23 billion worth of crude oil and natural gas produced from Federal and Indian leases in FY 2015.

### **D. Unfunded Mandates Reform Act**

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing

the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

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

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

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

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

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

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

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

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

**H. Consultation with Indian Tribes (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's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

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

This rule does not contain information collection requirements, and a submission to 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**

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

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

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

### **L. Administrative Procedure Act**

The BLM is promulgating this rule as a final rule because the Act expressly directs us to do so. In accordance with the Act, agencies must adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA) (see §4(b)(2) of the Act). This means that the notice and opportunity to comment procedures of the APA do not apply and are not required for agencies to issue regulations implementing the annual adjustment. In addition, since the Act does not give the BLM any discretion to vary the amount of the annual inflation adjustment for any given penalty to reflect any views or suggestions provided by

commenters, it would serve no purpose to provide an opportunity for public comment on this rule.

### **List of Subjects 43 CFR Part 3160**

Administrative practice and procedure; Government contracts; Indians-lands; Mineral royalties; Oil and gas exploration; Penalties; Public lands-mineral resources; Reporting and recordkeeping requirements.

For the reasons given in the preamble, the BLM amends Chapter II of Title 43 of the Code of Federal Regulations as follows:

### **PART 3160 – ONSHORE OIL AND GAS OPERATIONS**

1. The authority citation for part 3160 is revised to read as follows:

**Authority:** 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

### **Subpart 3163 – Noncompliance, Assessments, and Penalties**

#### **§ 3163.2 [Amended]**

2. In § 3163.2:

a. In paragraph (a), remove “\$1,031” and add in its place “\$1,048”.

b. In paragraph (b), remove “\$10,314” and add in its place “\$10,483”.

c. In paragraph (d), remove “\$1,031” and add in its place “\$1,048”.

d. In paragraph (e) introductory text, remove “\$20,628” and add in its place “\$20,965”.

e. In paragraph (f) introductory text, remove “\$51,570” and add in its place “\$52,414”.

f. In paragraph (g)(1), remove “\$1,031” each place that it occurs and add in its place “\$1,048”; remove “\$10,314” and add in its place “\$10,483”; remove “\$2,063 and add in its place “\$2,097”;

remove “\$20,628” each place that it occurs and add in its place “\$20,965”; remove “\$51,570” and add in its place “\$52,414”.

g. In paragraph (g)(2)(iii), remove “\$103” and add in its place “\$105”; remove “\$1,031” and add in its place “\$1,048”; remove “\$206” and add in its place “\$209”; remove “\$2,063” and add in its place “\$2,097”.

January 10, 2017

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Amanda C. Leiter

Acting Assistant Secretary

Land and Minerals Management

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