



BAC-4310-VH

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2018-0001; 189E1700D2 ET1SF0000.PSB000 EEEE500000]

RIN 1014-AA36

Oil and Gas and Sulfur Operations on the Outer Continental Shelf — Civil Penalty

Inflation Adjustment

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of the maximum 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. The civil penalty inflation adjustment, using a 1.02041 multiplier, accounts for one year of inflation spanning October 2016 to October 2017.

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

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SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

II. Calculation of Adjustments

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563, and 13771)

B. Regulatory Flexibility Act

C. Small Business Regulatory Enforcement Fairness Act

D. Unfunded Mandates Reform Act

E. Takings (E.O. 12630)

F. Federalism (E.O. 13132)

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

H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)

I. Paperwork Reduction Act

J. National Environmental Policy Act

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

I. Background and Legal Authority

The OCSLA, at 43 U.S.C. 1350(b)(1), directs the Secretary of the Interior (Secretary) 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. On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74) (FCPIA of 2015) became law. The FCPIA of 2015 required Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation.

Agencies were required to publish the first annual inflation adjustments in the *Federal Register* by no later than January 15, 2017, and must publish recurring annual inflation adjustments by no later than January 15 each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

BSEE last updated civil penalty amounts in BSEE regulations through a final rule (RIN 1014-AA34; 82 FR 9136), published and effective on February 3, 2017. Consistent with OMB guidance, BSEE's final rule (FR) implemented the adjustments required by the FCPIA of 2015 through October 2016.

The OMB Memorandum M-18-03 (Implementation of the 2018 annual adjustment pursuant to the FCPIA of 2015; [<https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>]) explains agency responsibilities for: identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the *Federal Register*; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BSEE is promulgating this 2018 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB guidance. A proposed rule is not required because the FCPIA of 2015 states that agencies shall adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” (FCPIA of 2015 at section 4(b)(2)). Accordingly, Congress expressly exempted the annual inflation adjustments implemented pursuant to the FCPIA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act (APA), allowing them to be published as a final rule. This interpretation of the statute is confirmed by OMB Memorandum M-18-03. (OMB Memorandum M-18-03 at 4, “This means that the public procedure the APA generally

requires – notice, an opportunity for comment, and a delay in effective date – is not required for agencies to issue regulations implementing the annual adjustment.”).

II. Calculation of Adjustments

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M-18-03, BSEE has identified the applicable civil monetary penalty and calculated the necessary inflation adjustment. The previous OCSLA civil penalty inflation adjustment accounted for inflation through October 2016. The required annual civil penalty inflation adjustment promulgated through this rule accounts for inflation through October 2017.

Annual inflation adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI-U) for the October preceding the date of the adjustment and the prior year’s October CPI-U. Consistent with the guidance in OMB Memorandum M-18-03, BSEE divided the October 2017 CPI-U by the October 2016 CPI-U to calculate the multiplying factor. In this case, October 2017 CPI-U (246.663) / October 2016 CPI-U (241.729) = 1.02041. OMB Memorandum M-18-03 confirms that this is the proper multiplier. (OMB Memorandum M-18-03 at 1 and n.4.).

For 2018, OCSLA and the FCPIA of 2015 require that BSEE adjust the OCSLA maximum civil penalty amount. To accomplish this, BSEE multiplied the existing OCSLA maximum civil penalty amount (\$42,704) by the multiplying factor ($\$42,704 \times 1.02041 = \$43,575.59$). The FCPIA of 2015 requires that the resulting amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$43,576.

The adjusted penalty levels take effect immediately upon publication of this rule. 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) predates such increase. Consistent with the provisions of 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, per-violation.	\$42,704	1.02041	\$43,576

III. Procedural Requirements

A. Regulatory Planning and Review(Executive Orders 12866, 13563, and 13771)

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs will review all significant rules. The OMB Office of Information and Regulatory Affairs (OIRA) has determined that this rule is not significant. (*See* OMB Memorandum M-18-03 at 3).

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. E.O. 13563 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 further emphasizes 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, to the extent permitted by statute.

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. OIRA has determined that agency regulations exclusively implementing the annual adjustment are not significant regulatory actions under E.O. 12866, provided they are consistent with OMB Memorandum M-18-03 (*See* OMB Memorandum M-18-03 at 4); thus, E.O. 13771 does not apply to this rulemaking.

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 FCPIA of 2015 expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. (*See* FCPIA of 2015 at section 4(b)(2); OMB Memorandum M-18-03 at 4). 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) Does 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; and

(3) 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.

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. Therefore, 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 E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, 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. We have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies 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, as a regulation of an administrative nature, this rule is covered by a categorical exclusion (*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. Therefore, a detailed statement under NEPA is not required.

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

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

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Continental Shelf—mineral resources, Continental Shelf—rights-of-way, Environmental impact statements, Environmental protection,

Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Reporting and recordkeeping requirements, Sulfur.

Joseph R. Balash,
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U.S. Department of the Interior.

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 SULFUR OPERATIONS IN THE OUTER
CONTINENTAL SHELF**

1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

2. Revise § 250.1403 to read as follows:

§ 250.1403 What is the maximum civil penalty?

The maximum civil penalty is \$43,576 per day per violation.

[FR Doc. 2018-00920 Filed: 1/17/2018 8:45 am; Publication Date: 1/18/2018]