



**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3160**

**[LLWO310000 L13100000 PP0000 18X]**

**RIN: 1004-AE51**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The adjustments made by this final rule constitute the 2018 annual inflation adjustments, accounting for one year of inflation spanning the period from October 2016 through October 2017.

**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 Relay Service (FRS) 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 Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (the 2015 Act) became law.

The 2015 Act requires agencies to:

1. Adjust the level of civil monetary penalties for inflation 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.

The purpose of these adjustments is to further the policy goals of the underlying statutes.

As required by the 2015 Act, the BLM issued an interim final rule that adjusted the level of civil monetary penalties in BLM regulations with the initial “catch-up” adjustment (RIN 1004-AE46, 81 FR 41,860), which was published on June 28, 2016, and became effective on July 28, 2016. On January 19, 2017, the BLM published a final rule (RIN 1004-AE49, 82 Fed. Reg. 6,307) updating the civil penalty amounts to the 2017 annual adjustment levels.

OMB issued Memorandum M-18-03 on December 15, 2017 (Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the 2015 Act) explaining agency responsibilities for identifying applicable penalties and calculating the annual adjustment for 2018 in accordance with the 2015 Act.

## **II. Calculation of 2018 Adjustment**

In accordance with the 2015 Act and OMB Memorandum M-18-03, the BLM has identified applicable civil monetary penalties in its regulations 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, nor does it include fees for services, licenses, permits, or other regulatory review. The calculated 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 guidance in OMB Memorandum M-18-03, the BLM divided the October 2017 CPI-U by the October 2016 CPI-U to calculate the multiplier. 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.)

The 2015 Act requires the BLM to adjust the civil penalty amounts in 43 CFR 3163.2. To accomplish this, BLM multiplied the current penalty amounts in 43 CFR 3163.2 subparagraph (b)(2) and paragraphs (d), (e), and (f) by the multiplier set forth in OMB Memorandum M-18-03 (1.02041) to obtain the adjusted penalty amounts. The 2015 Act requires that the resulting amounts be rounded to the nearest \$1.00 at the end of the calculation process.

Due to an error, the current penalty amount in 43 CFR 3163.2(b)(1) of \$1,031 reflects the initial “catch-up” adjustment published on June 28, 2016, rather than the 2017 annual adjusted amount of \$1,048. The correct adjusted penalty amount in 43 CFR 3163(b)(1) of \$1,069 was calculated by multiplying the 2017 annual adjusted amount (\$1,048) by the multiplier set forth in OMB Memorandum M-18-03 (1.02041).

The adjusted penalty amounts will take effect immediately upon publication of this rule. Pursuant to the 2015 Act, the adjusted civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates such increase. This final rule adjusts the following civil penalties:

CFR Citation	Description of the Penalty	Current Penalty	Adjusted Penalty
43 CFR 3163.2(b)(1)	Failure to comply	\$1,031	\$1,069
43 CFR 3163.2(b)(2)	If corrective action is not taken	\$10,483	\$10,697
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation	\$1,048	\$1,069
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	\$20,965	\$21,393
43 CFR 3163.2(f)	False or inaccurate documents; unlawful	\$52,414	\$53,484

	transfer or purchase		
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### **III. Procedural Requirements**

#### **A. Administrative Procedure Act**

In accordance with the 2015 Act, agencies must adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act” (2015 Act at §4(b)(2)). The BLM is promulgating this 2018 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the 2015 Act and OMB guidance. A proposed rule is not required because the 2015 Act expressly exempts the annual inflation adjustments from the notice and comment requirements of the Administrative Procedure Act. In addition, since the 2015 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.

#### **B. Regulatory Planning and Review(Executive Orders 12866, 13563, and 13771)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. 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 and to reduce uncertainty and the use of 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 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 to the extent permitted by the 2015 Act.

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 3). Therefore, E.O. 13771 does not apply to this final rule.

### **C. 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 2015 Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment (*see* 2015 Act at § 4 (b)(2)). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

### **D. 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) Will 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; and

(c) 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.

This rule will potentially affect individuals and companies who conduct operations on oil and gas 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 (SBA). 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, even though most of the entities potentially affected are small businesses as defined by the SBA, the adjusted penalties and potential increase in penalty receipts are small in comparison to the \$16 billion value of oil, natural gas and natural gas liquids produced from Federal and Indian leases in FY 2016.

#### **E. 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.

#### **F. 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.

**G. 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.

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

This rule complies with the requirements of E.O. 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.

**I. 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 E.O. 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.

**J. 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.

#### **K. National Environmental Policy Act**

A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, the 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.

#### **L. 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 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 continues 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. 701, 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 (b)(1), remove “\$1,031” and add in its place “\$1,069”.

b. In paragraph (b)(2), remove “\$10,483” and add in its place “\$10,697”.

c. In paragraph (d), remove “\$1,048” and add in its place “\$1,069”.

d. In paragraph (e) introductory text, remove “\$20,965” and add in its place “\$21,393”.

e. In paragraph (f) introductory text, remove “\$52,414” and add in its place “\$53,484”.

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U.S. Department of the Interior  
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