



DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM-2021-0006]

RIN 1010-AE06

2021 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior

ACTION: Final rule.

SUMMARY: This final rule implements the 2021 inflation adjustments to the maximum daily civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Oil Pollution Act of 1990 (OPA), pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIAA Improvements Act) and relevant Office of Management and Budget (OMB) guidance. The 2021 adjustment multiplier of 1.01182 accounts for one year of inflation from October 2019 through October 2020.

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

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I. Legal Authority

OCSLA authorizes the Secretary of the Interior (the Secretary) to impose a daily civil monetary penalty for a violation of OCSLA or its implementing regulations, leases, permits, or

orders and directs the Secretary to adjust the maximum penalty at least every three years to reflect any inflation increase in the Consumer Price Index. 43 U.S.C. 1350(b)(1). Similarly, OPA authorizes civil monetary penalties for failure to comply with OPA’s financial responsibility provisions or its implementing regulations. 33 U.S.C. 2716a(a). OPA does not include a maximum daily civil penalty inflation adjustment provision. *Id.*

The FCPIAA Improvements Act¹ requires that Federal agencies publish inflation adjustments to their civil monetary penalties in the *Federal Register* not later than January 15 annually.² Pub. L. 114-74, sec. 701(b)(1). The purposes behind these inflation adjustments are to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, sec. 2 (codified at 28 U.S.C. 2461 note).

II. Background

BOEM implemented the 2020 inflation adjustment for its civil monetary penalties through a final rule, “2020 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf,” published in the *Federal Register* on February 7, 2020, which accounted for inflation for the twelve month period between October 2018 and October 2019. 85 FR 7218 (February 7, 2020).

For 2021, OMB issued guidance that explains agency statutory responsibilities for identifying applicable civil monetary 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. “Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) Improvements Act of 2015,” OMB Memorandum M-21-10,

¹ The FCPIAA Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990. Pub. L. 101-410 (codified at 28 U.S.C. 2461 note).

² Under the FCPIAA Improvements Act, Federal agencies were required to adjust their civil monetary penalties for inflation with an initial “catch-up” adjustment through an interim final rulemaking in 2016 and are required to make subsequent inflation adjustments not later than January 15 annually, beginning in 2017. Pub. L. 114-74, sec. 701(b)(1).

December 23, 2020 (OMB M-21-10), available at <https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf>.

Through this final rule, pursuant to the FCPIAA Improvements Act and OMB M-21-10, BOEM is implementing the 2021 inflation adjustments to the OCSLA and OPA maximum daily civil monetary penalties. A proposed rule is unnecessary. The FCPIAA Improvements Act expressly exempts annual civil penalty inflation adjustments from the Administrative Procedure Act's (APA) notice of proposed rulemaking, public comment, and standard effective date provisions. FCPIAA Improvements Act, Pub. L. 114-74, sec. 701(b)(1)(D); APA, 5 U.S.C. 553.³

III. Calculation of 2021 Adjustments

OMB issued guidance to Federal agencies on implementing the 2021 annual civil monetary penalties inflation adjustments, including the adjustment multiplier: 1.01182. OMB M-21-10; FCPIAA Improvements Act, sec. 701(b)(4).⁴ In accordance with the FCPIAA Improvements Act and OMB M-21-10, BOEM determined the OCSLA and OPA maximum daily civil monetary penalties require annual inflation adjustments and is issuing this final rule adjusting those penalty amounts for inflation through October 2020.

For 2021, BOEM multiplied the current OCSLA maximum daily civil penalty of \$45,463 by the multiplier 1.01182 to equal \$46,000.37, rounded to the nearest cent ($\$45,463 \times 1.01182 = \$46,000.37$). The FCPIAA Improvements Act requires that the resulting amount then be rounded to the nearest dollar. Accordingly, the 2021 adjusted OCSLA maximum daily civil monetary penalty is \$46,000.

³ Specifically, Congress directed that agencies adjust civil monetary penalties “notwithstanding section 553 of title 5, United States Code [Administrative Procedure Act (APA)],” which generally requires prior notice of proposed rulemaking, opportunity for public comment on proposed rulemaking, and publication of a final rule at least 30 days before its effective date. FCPIAA Improvements Act, sec. 701(b)(1)(D); APA, 5 U.S.C. 553. OMB confirmed this interpretation of the FCPIAA Improvements Act. OMB M-21-10 at 3 (“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.”).

⁴ The annual inflation adjustment is based on the percent 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 OMB M-21-10, the 2021 multiplier can be calculated by dividing the October 2020 CPI-U by the October 2019 CPI-U. In this case, October 2020 CPI-U (260.388) / October 2019 CPI-U (257.346) = 1.01182.

For 2021, BOEM multiplied the current OPA maximum daily civil penalty amount of \$48,192 by the multiplier 1.01182 to equal \$48,761.63, rounded to the nearest cent ($\$48,192 \times 1.01182 = \$48,761.63$). The FCPIAA Improvements Act requires that the resulting amount then be rounded to the nearest dollar. Accordingly, the 2021 adjusted OPA maximum daily civil monetary penalty is \$48,762.

The adjusted penalty amounts take effect immediately upon publication of this rule. Under the FCPIAA Improvements Act, the adjusted amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates the increase.

This table summarizes BOEM’s 2021 maximum daily civil monetary penalties for each OCSLA and OPA violation:

CFR Citation	Description of the Penalty	Current Maximum Penalty	Multiplier	Adjusted Maximum Penalty
30 CFR 550.1403 (OCSLA)	Failure to comply per day per violation.	\$45,463	1.01182	\$46,000
30 CFR 553.51(a) (OPA)	Failure to comply per day per violation.	\$48,192	1.01182	\$48,762

IV. Procedural Requirement

A. Statutes

1. 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 (NEPA, 42 U.S.C. 4321 et seq.) 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). BOEM also has determined that the rule does not implicate 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.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 et seq.) 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 FCPIAA Improvements Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. FCPIAA Improvements Act, Pub. L. 114-74, sec. 701(b)(1)(D); OMB M-21-10 at 3. Thus, the RFA does not apply to this rulemaking.

3. Paperwork Reduction Act

This rule does not contain information collection requirements, and, therefore, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not required.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than \$164 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or on 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.

5. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). 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.

6. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.) and OMB guidance,⁵ the Office of Information and Regulatory Affairs (OIRA) determined that this rule is not a major rule, as defined by the act.⁶ Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, Fall 2020 Unified Agenda of Regulatory and Deregulatory Actions, Department of the Interior, RIN 1010-AE06, available at:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=1010-AE06>.

B. Executive Orders (E.O.)

1. *Governmental Actions and Interference with Constitutionally Protected Property Rights* (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.

2. *Regulatory Planning and Review* (E.O. 12866); *Improving Regulation and Regulatory Review* (E.O. 13563)

E.O. 12866 provides that OIRA will review all significant rules. OIRA has determined that this rule is not significant. See OMB M-21-10 at 3.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to reduce uncertainty and to promote predictability 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

⁵ Office of Mgmt. & Budget, Exec. Office of the President, OMB M-19-14, Guidance on Compliance with the Congressional Review Act (2019).

⁶ 5 U.S.C. 804(2).

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. However, there is no science being used in this rulemaking, as Congress directed agencies to adjust the maximum daily civil penalty amounts using a particular equation, and BOEM does not have discretion to use any other factor in the adjustment. BOEM has developed this rule in a manner consistent with these E.O. 13563 requirements, to the extent relevant and feasible given the limited discretion provided agencies under the FCPIAA Improvements Act.

3. *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.

4. *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. To the extent State and local governments have a role in outer continental shelf activities, this rule will not affect that role. Therefore, a federalism summary impact statement is not required.

5. *Consultation and Coordination with Indian Tribal Governments* (E.O. 13175)

The Department of the Interior and BOEM strive to strengthen their government-to-government relationships with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. BOEM has 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 determined that this rule 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 and BOEM's tribal and ANCSA consultation policies is not required.

6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (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

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Laura Daniel-Davis
Principal Deputy Assistant Secretary
Land and Minerals Management

The action taken herein is pursuant to an existing delegation of authority.

For the reasons stated in the preamble, BOEM amends 30 CFR parts 550 and 553 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is \$46,000 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

4. In § 553.51, revise paragraph (a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$48,762 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

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