



4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM-2016-0055; MMAA104000]

RIN 1010-AD95

Oil and Gas and Sulphur Operations in the Outer Continental Shelf--Civil Penalties

Inflation Adjustments

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Interim final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations pursuant to the Outer Continental Shelf Lands Act, the Oil Pollution Act of 1990, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments will be accepted until [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments regarding this proposed rule to BOEM by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. Postal Service or Other Mail Delivery Service: Address to Robert Sebastian, Office of Policy, Regulation and Analysis (OPRA), BOEM, Department of the Interior, 1849 C Street, N.W., Mailstop 5238, Washington, DC 20240.
- Hand delivery to Office of Policy, Regulation and Analysis, BOEM, Department of the Interior, at 1849 C Street, N.W., Room 5249, Washington, DC 20240.

Please include your name, return address, and phone number and/or email address, so we can contact you if we have questions regarding your submission.

FOR FURTHER INFORMATION CONTACT: Robert Sebastian, Office of Policy, Regulation and Analysis at (504) 736-2761 or email at robert.sebastian@boem.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Calculation of Adjustments
- III. Procedural Requirements
 - A. Regulatory Planning and Review (E.O. 12866 and 13563)
 - 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)
- L. Clarity of this Regulation
- M. Administrative Procedure Act

I. Background

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation. 43 U.S.C. § 1350(b)(1). The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 104-410) (FCPIA of 1990) required that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every four years. Pursuant to OCSLA and the FCPIA of 1990, the OCSLA maximum civil penalty amount was last adjusted in 2011. 76 Fed. Reg. 38,294 (June 30, 2011). After running the computations, the Department of the Interior determined that adjustments of the OCSLA maximum civil penalty amount were not warranted in 2014 and 2015.

Similarly, the Oil Pollution Act (OPA) of 1990 authorizes the Secretary of the Interior to impose civil penalties for failure to comply with financial responsibility regulations that implement OPA. The FCPIA of 1990 required that all civil monetary penalties, including the OPA maximum civil penalty amount, be adjusted at least once every four years. Pursuant to the FCPIA of 1990, the OPA maximum civil penalty amount was adjusted for the first time in 2007, 72 Fed. Reg. 8,897 (Feb. 28, 2007), and again in 2011, 76 Fed. Reg. 38,294 (June 30, 2011). After running the computations, the Department of the Interior determined that adjustments of the OPA maximum civil penalty amount were not warranted in 2014 and 2015.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74) (FCPIA of 2015), which further amended the FCPIA of 1990. The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment, if warranted, through rulemaking, and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Pursuant to OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalties per day per violation:

CFR Citation	Description of the Penalty	Current Maximum Penalty	Multiplier	Adjusted Maximum Penalty
30 CFR 550.1403	Failure to comply with regulatory and contractual obligations	\$40,000	1.05042	\$42,017
30 CFR 553.51(a)	Failure to comply with financial responsibility requirements	*\$25,000	1.78156	\$44,539

* The current OPA maximum civil penalty amount provided in 30 CFR 553.51(a) is \$30,000. However, the FCPIA of 2015 instructs BOEM to use the OPA maximum civil penalty amount as last adjusted by a provision of law other than the FCPIA of 1990 when calculating the 2016 civil penalty adjustment. Therefore, BOEM used the OPA maximum civil penalty amount of \$25,000, which was established by OPA in 1990, when calculating the 2016 civil penalty adjustment.

II. Calculation of Adjustments

The Office of Management and Budget (OMB) issued guidance on calculating the civil monetary penalty adjustments pursuant to the FCPIA of 2015. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, subject: *Implementation of 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

necessary adjustments. 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 adjustment for 2016 is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the calendar year of the previous adjustment (or in the year of establishment, if subsequent adjustments were made pursuant to the FCPIA of 1990) and the October 2015 CPI-U.

For 2016, OCSLA and the FCPIA of 2015 require that BOEM adjust the OCSLA maximum civil penalty amount and provide the adjustment timing. In computing the new OCSLA maximum civil penalty amount, since the amount was last adjusted in 2011, BOEM divided the October 2015 CPI-U by the October 2011 CPI-U ($237.838/226.421$). This resulted in a multiplying factor of 1.05042. The existing OCSLA maximum civil penalty amount (\$40,000) was multiplied by the multiplying factor ($40,000 \times 1.05042 = 42,016.80$). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$42,017. This increase in the OCSLA maximum civil penalty amount does not exceed 150 percent of the OCSLA maximum civil penalty amount as of November 2, 2015, and thus complies with the FCPIA of 2015. Also, 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.

For 2016, the FCPIA of 2015 requires that BOEM adjust the OPA maximum civil penalty amount and provides the adjustment timing. The OPA maximum civil penalty amount was last adjusted pursuant to the FPCIA of 1990 in 2011 (\$30,000). However, the FCPIA of 2015 instructs BOEM to use the OPA maximum civil penalty amount as last adjusted by a provision of law other than the FCPIA of 1990 when calculating the 2016 civil penalty adjustment. The OPA maximum civil penalty was last adjusted by a provision of law other than the FCPIA of 1990 when it was established by OPA in 1990. Therefore, in computing the new OPA maximum civil penalty amount, BOEM divided the October 2015 CPI-U by the October 1990 CPI-U (237.838/133.5). This resulted in a multiplying factor of 1.78156. The statutory OPA maximum civil penalty amount (\$25,000) was multiplied by the multiplying factor (25,000 x 1.78156 = 44,539.00). The FCPIA of 2015 requires that the OPA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OPA maximum civil penalty is \$44,539. This increase in the OPA maximum civil penalty amount does not exceed 150 percent of the OPA maximum civil penalty amount as of November 2, 2015, and thus complies with the FCPIA of 2015. Also, pursuant to the FCPIA of 2015, the increase in the OPA 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.

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, to the extent permitted by statute.

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 Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. 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:

- (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.

(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.

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, under Departmental Manual Part 512 Chapters 4 and 5, 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 the Office of Management and Budget 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 the rule is covered by a categorical exclusion (see 43 CFR 46.210(i)). This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. 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.

A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the “ADDRESSES” section. Your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act

The FCPIA of 2015 requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties of no later than August 1, 2016. To comply with the FCPIA of 2015, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. The Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure...are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an

opportunity for prior public comment. 5 U.S.C. 553(b). BOEM finds that there is good cause to promulgate this rule without first providing for public comment. It would not be practicable to meet the deadlines imposed by the FCPIA of 2015 if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, BOEM is promulgating this final rule to implement the statutory directive in the FCPIA of 2015, which requires agencies to publish an interim final rule and to update the civil penalty amounts by applying a specified formula. BOEM has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters, so notice and comment is unnecessary. Accordingly, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule. Thus, BOEM finds pre-promulgation notice and public comment to be impracticable and unnecessary.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, environmental impact statements, environmental protection, federal lands, government contracts, investigations, oil and gas exploration, outer continental shelf, penalties, pipelines, mineral resources, rights-of-way, reporting and recordkeeping requirements, sulfur.

30 CFR Part 553

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

Dated; June 24, 2016._

Janice M. Schneider,
Assistant Secretary - Land and Minerals Management.

For the reasons stated in the preamble, the 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 is revised 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 \$42,017 per day per violation.

**PART 553 – OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE
FACILITIES**

3. The authority citation for part 553 is revised 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 \$44,539 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2016-15607 Filed: 6/30/2016 8:45 am; Publication Date: 7/1/2016]