



4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2016-0010; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

RIN: 1014-AA30

Civil Penalty Inflation Adjustment

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of the 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.

DATES: Effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Robert Fisher, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208-3955 or by email: regs@bsee.gov.

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I. Background

This final rule was initiated as a BSEE Interim Final Rule “Civil Penalty Inflation Adjustment,” which was published in the *Federal Register* on June 28, 2016. (81 FR 41801). The Interim Final Rule (IFR) adjusted the level of the maximum civil monetary penalty contained in BSEE regulations pursuant to OCSLA, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and OMB guidance. The IFR was effective July 28, 2016, and the IFR comment period closed on August 29, 2016. No comments were received and BSEE is finalizing the IFR as published.

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 (CPI) 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 4 years. Pursuant to OCSLA and the FCPIA of 1990, the OCSLA maximum civil penalty amount was last adjusted in 2011. (*See* 76 FR 38294 (June 30, 2011)). In 2014 and 2015, BSEE performed computations to determine if it should increase the existing OCSLA maximum civil penalty amount to account for inflation. After performing those computations, BSEE determined that adjustments of the OCSLA maximum civil penalty amounts 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). 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 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	\$40,000	1.05042	\$42,017

II. Calculation of Adjustment

On February 24, 2016, OMB issued guidance on calculating the civil monetary penalty adjustments pursuant to the FCPIA of 2015. (See Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, OMB, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*). Based on this guidance, the Department of the Interior 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 initial calculated adjustment is based on the percent change between the CPI for all Urban Consumers for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI.

For 2016, OCSLA and the FCPIA of 2015 required that BSEE adjust the OCSLA maximum civil penalty amount and provide for the adjustment timing. In computing the new

OCSLA maximum civil penalty amount, in accordance with the OMB guidance, BSEE divided the October 2015 CPI by the October 2011 CPI (237.838/226.421) since BSEE last adjusted the maximum civil penalty amount in 2011. This resulted in a multiplying factor of 1.05042. The existing maximum civil penalty amount (\$40,000) was multiplied by the multiplying factor ($40,000 \times 1.05042 = 42,016.8$). 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, as stipulated by 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 took effect (July 28, 2016), even when the associated violation(s) predate(s) such increase.

III. Comments Received on the Interim Final Rule

Although the IFR was effective as of July 28, 2016, the IFR included a request for public comments. The public comment period closed on August 29, 2016. BSEE received no comments on the IFR and is therefore finalizing this rulemaking as originally implemented by the IFR.

IV. Procedural Matters

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

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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.

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)). Because the FCPIA of 2015 requires agencies to adjust penalties for the catch-up adjustment

through an interim final rulemaking, agencies are not required to complete a notice and comment process prior to promulgation. 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.
- (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 and that consultation under the Department of the Interior's tribal consultation policy 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 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 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, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil

and gas exploration, Penalties, Pipelines, Continental Shelf—mineral resources, Continental Shelf—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

Amanda C. Leiter,
Acting Assistant Secretary,
Land and Minerals Management.

**PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER
CONTINENTAL SHELF**

Accordingly, the interim rule amending 30 CFR part 250 which was published at 81 FR 41801 on June 28, 2016, is adopted as a final rule without change.

[FR Doc. 2016-27503 Filed: 11/16/2016 8:45 am; Publication Date: 11/17/2016]